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Part 1 of 10

TTAB

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March 13, 2006

via FIRST-CLASS MAIL

Box TTAB NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Re: The United States Playing Card Company v. Harbro LLC
Opposition No.: 91162078
Serial No.: 78/253,725

Dear Honorable Sir:

Enclosed are the Opposer's Trial Brief and Notice of Filing which were filed electronically today. As stated in the Notice, the attachments are included in this First Class mailing.

Kindly acknowledge receipt of the enclosures by stamping and returning the enclosed postcard.

Very truly yours,



Lynda E. Roesch

LER:kw
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cc: Timothy A. Flory, Esq.



03-27-2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE UNITED STATES PLAYING
CARD COMPANY,

Opposer,

v.

HARBRO, LLC,

Applicant.

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Opposition No.: 91162078

OPPOSER'S TRIAL BRIEF

March 13, 2006

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I. **Preliminary Statement**

Harbro, LLC, ("Harbro") applied at the U.S. Patent and Trademark Office to register the mark **VEGAS**, in International Class 28 for "playing cards." The United States Playing Card Company ("USPC"), a well known manufacturer of playing cards, believes it will be damaged by Harbro's registration of the VEGAS mark. Therefore, USPC filed a petition to oppose the mark based on the fact that the mark is deceptive under Section 2(a) of the Trademark Act or primarily geographically misdescriptive or descriptive within the meaning of Section 2(e). 15 U.S.C. §1052.

Vegas is the "literal equivalent" of the well known tourist destination Las Vegas, Nevada. Hundreds of news stories in 2005 demonstrate that the public knows Las Vegas, Nevada, as both its full name "Las Vegas" as well as its shorter version "Vegas." Vegas is home to several well-known casinos including the MGM Grand, the Bellagio, the Luxor, the Venetian, Binion's Horseshoe, Mandalay Bay, the Rio, the Flamingo and many others.

USPC sells playing cards to these casinos for use at their card tables. Las Vegas is famous for gambling and legally sanctioned games of chance, often using playing cards, such as Blackjack, Baccarat, Pai Gow Poker, Let it Ride, and others. The city also serves as the host of many world-famous poker tournaments including the World Series of Poker and the World Poker Tour's annual championship. Because card playing is prevalent throughout Las Vegas and is one of the reasons tourists visit Las Vegas, the city is associated with card games like poker and playing cards themselves. Additionally, playing cards themselves are associated with Las Vegas. USPC maintains a warehouse in Las Vegas, and the U.S. operations of a major playing card manufacturer, Gaming Players International (GPI), is headquartered in Las Vegas. There is also a market in retail stores

and on the internet for cancelled cards from Las Vegas casinos. Thus, playing cards are intimately associated with Las Vegas.

Applicant's VEGAS mark is not registerable because the mark is primarily geographically misdescriptive. First, Vegas is a well known geographical destination. Second, Las Vegas is associated with playing cards. Finally, the association of a deck of cards with Las Vegas is a material factor in a consumer's purchasing decision. Applicant's cards are not produced in Vegas nor are they used in Vegas casinos, though a consumer purchasing the cards might think otherwise. Thus, Harbro's mark misdescribes its geographic origin in a way that violates this Board's three part test for geographic misdescriptiveness enumerated in In re California Innovations, Inc., 66 U.S.P.Q.2d 1853, 1857 (Fed. Cir. 2003).

The mark VEGAS as applied to Playing Cards is deceptive and primarily geographically misdescriptive, or primarily geographically descriptive. Therefore, the Board should sustain the opposition and refuse registration of the mark.

II. Procedural History

Harbro, LLC, filed an application to register Vegas for playing cards on May 23, 2003, in Class 28 on the Principal Register. The mark was approved for publication on July 21, 2004, and was published in the Official Gazette on August 10, 2004.

USPC filed an opposition to Harbro's VEGAS application on September 9, 2004. Opposer asserted as grounds (1) the mark was deceptive under 15 U.S.C. § 1052(a); (2) or the mark was primarily geographically descriptive or misdescriptive under 15 U.S.C. § 1052(e). Harbro answered the Notice of Opposition on October 29, 2004. Both parties engaged in discovery thereafter.

Opposer, USPC, took trial testimony between July 1, 2005 and July 31, 2005. Harbro's trial testimony occurred between October 28, 2005 and November 28, 2005. Between December 29, 2005 and January 12, 2006, USPC offered rebuttal evidence and testimony. Opposer submits a Notice of Filing concurrently with its Brief outlining each submission by Opposer to the Board. Depositions and exhibits are submitted to the Board and applicant via U.S. Mail, First Class, due to the large volume of documents submitted.

III. Evidence Relied Upon

A. Opposer's Direct Evidence

Opposer relies upon the trial testimony of the following witnesses:

1. Kevin Bagger, Las Vegas Convention and Visitor's Authority. Mr. Bagger is the director of internet marketing and research for the Las Vegas Convention and Visitor's Authority (LVCVA). (Bagger at 5). LVCVA is the official marketing organization for Las Vegas and the surrounding communities. (Bagger at 5-6). In his capacity as director of internet marketing, Bagger oversees all web marketing efforts of LVCVA. As an employee with eight-years experience, Bagger is familiar with the efforts the Authority makes to promote travel and tourism to Las Vegas. (Bagger at 5-8).

2. Dan Espenscheid, United States Playing Card. Mr. Espenscheid is the Casino Sales Manager for USPC. (Espenscheid at 5). As Casino Sales Manager, Espenscheid is responsible for USPC contracts supplying playing cards to approximately 85 percent of the casinos in Las Vegas. Espenscheid also manages and supervises USPC's Las Vegas warehouse that stores the playing cards for distribution to Las Vegas casinos. (Espenscheid at 7). Mr. Espenscheid is also familiar with how playing cards are used in the casinos of Las Vegas, (Espenscheid at 12.) and the growth of popularity of poker in Las

Vegas. (Espenscheid at 20). Mr. Espenscheid also testified about the sale and market for used casino cards sold in Vegas gift shops. (Espenscheid at 26).

Opposer also relies upon the following Notice of Reliance filed under Rule 2.122(e):

USPC filed a Notice of Reliance on July 29, 2005 with references to over **630** articles from printed publications from newspapers and magazines available to the public. The Notice of Reliance also includes references to entries in *Merriam-Webster's Geographical Dictionary*, *MSN-Encarta* and *American Heritage Illustrated Encyclopedic Dictionary* and television transcripts. Evidence in this Notice of Reliance proves that Vegas refers to Las Vegas, Nevada, which is a well known geographical location, and perhaps the most popular tourist destination in the United States, that an association exists between Vegas and playing cards, and that a material factor in a consumer's purchasing decision is the association between Vegas and playing cards.

B. Applicant's Evidence

Applicant relied upon the testimony of a single witness and four U.S. trademark registrations attached to it's Notice of Reliance.

Applicant's witness:

Karl T. Ondersma, Attorney - VanDyke, Gardner, Linn & Burkhart, Applicant's sole witness, is a an associate with the law firm of VanDyke, Gardner, Linn & Burkhart. (Ondersma at 4). Mr. Ondersma testified that he purchased Las Vegas themed playing cards at a store in Detroit. Testimony from Mr. Ondersma and Exhibit G to his deposition demonstrate the availability of cancelled casino cards used in Las Vegas casinos to purchasers on the internet.

Applicant's Notice of Reliance filed under Rule 2.122(e):

Applicant's Notice of Reliance filed on November 28, 2005 consists of four U.S. trademark registrations (172,312 registered in 1923; 401,715 registered in 1943; 726,940 registered in 1962 and 1,189,273 registered in 1982), all granted well prior to the enactment of NAFTA, the North American Free Trade Agreement, and the amended Lanham Act. Because these registrations were granted when there was a different standard governing primarily geographically misdescriptive marks, they are not relevant to this proceeding. See, In re California Innovations Inc., 66 U.S.P.Q.2d 1853, 1857 (Fed. Cir. 2003) (Because NAFTA and the amended Lanham Act place an emphasis on actually misleading the public, the PTO may not deny registration now without a showing that the goods-place association made by the consumer is material to the consumer's decision to purchase the goods.).

Additionally, third-party registrations are not evidence that the marks were in use and that the relevant purchasing public is familiar with them. In re Broyhill Furniture Industries Inc., 60 U.S.P.Q.2d 1511 (TTAB 2001) (rejecting argument that third-party registrations were evidence that it was customary in the furniture industry to use geographic names as trademarks for furniture and that these locations were strongly associated with a particular style or motif). Further, the PTO's allowance of other registrations with characteristics similar to Applicant's does not bind the Board to act similarly in this case. In re Nett Designs Inc., 57 U.S.P.Q.2d 1564, 1566, 236 F.3d 1339 (Fed. Cir. 2001).

C. Opposer's Rebuttal Evidence

To rebut Applicant's argument that the term VEGAS is not primarily geographic and to rebut Applicant's argument that playing cards are not associated with Las Vegas

because playing cards may be manufactured and purchased in other geographic locations, Opposer produced rebuttal evidence which showed that, indeed, Vegas is primarily geographic and playing cards are associated with Vegas and that fact is material to the purchaser of playing cards.¹

Opposer relies on the rebuttal trial testimony of the following witnesses:

1. Joseph A. Robinette, United States Playing Card Company. Mr. Robinette is the General Counsel of USPC. (Robinette at 4). As General Counsel, Mr. Robinette coordinates administrative matters, such as trademark filings; he also reviews and drafts USPC's contracts. Further, Mr. Robinette prosecutes and defends all the litigation in which USPC is involved. (Robinette at 5). USPC approved an advertisement for a promotion run by the Kroger Company for the World Poker Tour, which Mr. Robinette reviewed. (*Id.* at 7). The promotion featured the word "Vegas," contained the front of several playing cards and indicated that the winner of the contest would "Win a Trip to Vegas." (Robinette Dep. Exhibit 2). The reference to "Vegas" was clearly a geographic location and playing cards are clearly associated with Vegas in the advertisement.

2. Kathryn K. Przywara, Attorney - Dinsmore & Shohl, LLP. Ms. Przywara is an Attorney with the law firm of Dinsmore & Shohl LLP. (Przywara at 4). Ms. Przywara testified regarding print outs of webpages she visited.² These web pages include the Gamblers General Store and OldVegasChips.com, sites which advertise and sell cancelled

¹ According to McCarthy, "plaintiff in its rebuttal case may introduce facts and witnesses appropriate to deny, explain or otherwise discredit the facts and witnesses of opponent..." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §20:117 (4th ed. 2005).

² Print-outs of articles downloaded from the internet are admissible where they are introduced with the testimony of the person who accessed the information on the internet. Raccioppi v. Apogee, Inc., 47 U.S.P.Q.2d 1368 (TTAB 1998). Additionally, web site advertisements are admissible as evidence of the purchasing public's perception. Mid City Bowling Lanes & Sports Palace Inc. v. Don Carter's All Star Lanes-Sunrise Ltd., 1998 U.S. Dist. LEXIS 3297 (E.D. La. Mar. 12, 1998) (Exhibit A).

cards from Las Vegas casinos. (*Id.* at 6 and Przywara Dep. Exhibits 6, 7 and 8). Ms. Przywara also testified that she purchased a charm bracelet with a playing card charm and a key tag containing black jack playing cards from the Las Vegas Centennial website. (Przywara at 8 and Przywara Dep. Exhibits 4 and 5). The evidence demonstrates that playing cards are associated with Vegas, and the association is a material factor in a consumer's purchasing decision.

Opposer also relies upon the following Notice of Reliance filed under Rule 2.122(e):

On January 12, 2006 Opposer filed a second Notice of Reliance, including printed publications, such as articles appearing in newspapers and magazines available to the public. The articles cited rebut Applicant's argument that there is no association between Vegas and playing cards and that consumers will not be deceived. The articles also show that the association is a material factor in the purchase decision.

IV. Statement of the Facts

The United States Playing Card Company is a manufacturer and distributor of playing cards.³ (Espenscheid at 6). Harbro is a manufacturer and distributor of products including playing cards. Both companies own U.S. Trademark Registrations for goods including "playing cards" in International Class 28.

On May 23, 2003, Harbro LLC, applied to register the mark VEGAS on the Primary Register. The Application was assigned Serial Number 78/253725. On July 21, 2004, the mark was approved for publication in the Official Gazette, and it appeared in the Gazette on

³ A competitor of the applicant has standing to oppose applicant's right of registration. Federal Glass Co. v. Corning Glass Works, 162 U.S.P.Q. 279, 282-83 (TTAB 1969); J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §20:11 (4th ed. 2005).

August 10, 2004. The United States Playing Card Company filed a Notice of Opposition on September 9, 2004.

Las Vegas, Nevada, is one of America's premier tourist destinations. (Bagger at 7) (Notice of Reliance Index 2, hereinafter "Index"). Las Vegas bills itself as "the entertainment capital of the world," where visitors can not only view live entertainment in casino showrooms, but also enjoy golf, fine dining, relax in a spa or spend time in a casino. (Bagger at 7-8). Las Vegas is known for its gaming, which includes legal games of chance like slot machines, blackjack, craps and roulette. (*Id.* at 9). These games frequently involve the use of playing cards. (*Id.* at 10).

Las Vegas has a visitors' bureau called the Las Vegas Convention and Visitors' Authority (LVCVA). (*Id.* at 5). This entity spends around **75 to 80 million dollars annually** on its advertising budget. (*Id.* at 10). One of LVCVA's current marketing strategies includes use of the logo "Only Vegas." The logo "Only Vegas" appears on the promotional brochures sent to potential visitors of Las Vegas. (*Id.* at 17, Bagger Dep. Exhibits 27 and 28). The official tourism agency also promotes its city by using the tagline "What Happens in Vegas Stays in Vegas." (Bagger at 17).

There are many well-known large casinos in Las Vegas, Nevada. (Espenscheid at 11). The casinos need a replenishable supply of playing cards in order to conduct games of chance such as black jack. (*Id.* at 12). USPC and other card companies including Gemaco and GPI supply playing cards to the casinos. (Espenscheid at 13. See also, Przywara Dep. Exhibit 2). For security reasons, once the casinos use the cards, they are "cancelled" by a process which marks the deck. Such markings include a cut corner or small hole drilled through the card so the cards cannot be reused without detection.

(Espenscheid at 13). Despite the markings on the cards there is a large market for sale of the marked cards because they have been used at a casino as demonstrated through the existence of a multitude of websites where the cards may be purchased. (See Ondersma Dep. Exhibit 6, Espenscheid Dep. Exhibits 10, 12, 13, 14, 15; Przywara Dep. Exhibits 6, 7, 8).

Consumers are able to buy the cancelled cards that were once in play at a casino as a souvenir or as a novelty item. (Espenscheid at 13; Bagger at 20; Index 631). As noted, websites also exist which feature the sale of cancelled playing cards. (Przywara at 11-16 and Przywara Dep. Exhibit 6, 7, 8). Cancelled cards may also be purchased in casino gift shops and stores like the Gambler's General Store in Las Vegas, Nevada. (Przywara at 11-16 and Przywara Dep. Exhibit 6; Espenscheid at 38-39).

ARGUMENT

United States Playing Card has offered considerable evidence that satisfies the three prong test to determine whether a mark is primarily geographically deceptively misdescriptive. In re California Innovations Inc., 66 U.S.P.Q.2d 1853 (Fed. Cir. 2003). The test, which was necessary due to changes in U.S. trademark law after the enactment of NAFTA, the North American Free Trade Agreement, provides that a trademark may not be federally registered if:

(1) the primary significance of the mark is a generally known geographic location, (2) the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place, and (3) the misrepresentation was a material factor in the consumer's decision.

Id. at 1858.

USPC has offered overwhelming evidence proving that the primary significance of Vegas is a generally known geographic location: Las Vegas, Nevada. The Convention and

Visitor's Bureau of Las Vegas, Nevada uses the term Vegas to refer to their city. The *Merriam Webster Geographic Dictionary* lists as its entry for Vegas a reference to the city of Las Vegas, Nevada. Hundreds of articles from periodicals use Vegas in a way that refers to the specific location of Las Vegas, Nevada. There is no escaping the fact that the primary significance of the mark VEGAS is that of a generally known geographic location.

Further, the consuming public is likely to believe that playing cards come from Vegas because of a strong goods-place association between playing cards and the city. Las Vegas is home to some of the nation's largest and most popular casinos. These casinos use playing cards in their games of chance. Additionally, the championships of the World Poker Tour and the World Series of Poker are held annually in Las Vegas and broadcast from Las Vegas on television throughout the country. (Espenscheid at 19-21; Index at 15, 624). Because the relevant public is likely to associate playing cards with gambling, and gambling with Las Vegas, the goods-place association is strong. Therefore, the purchasing public is likely to believe that the playing cards identified by a mark VEGAS are likely to be from Las Vegas.

Finally, the misrepresentation of applicant's goods as being from Vegas is likely to be material to the purchaser's decision. When a goods-place association is strong, the board may presume that a consumer will want goods from the geographical region known for the product. Moreover, the strong market and demand for cancelled casino cards demonstrates that the geographical location of where a playing card is from or used affect the consumer's purchasing decision.

For these reasons VEGAS is primarily geographically deceptively misdescriptive and should not be registered.

A. VEGAS is short for "Las Vegas," one of the best known geographic locations in the United States.

The evidence supporting the first element, the primary significance of the mark is a generally known geographic location, consists of dictionary definitions, **over 620** publications which refer to Vegas as a geographic location, and testimony by the Las Vegas Visitor's Bureau which uses VEGAS in advertisements to refer to its city. The scant evidence submitted by Applicant does nothing to contradict the fact that VEGAS is short for "Las Vegas" and refers to a well known, even perhaps one of the best known, geographic locations in the United States.

1. The Geographic Significance of VEGAS is illustrated by a Dictionary Entry

The Third Edition of *Merriam-Webster's Geographical Dictionary* lists an entry for Vegas: "See Las Vegas 1." Las Vegas is defined as:

"1. often shortened to Vegas. City of Clark Co., SE corner of Nevada, 22 miles NW of Boulder Dam; pop.(1990c) 258,295; alt. 2030 ft.; distribution center for mining and stock-raising region; major tourist resort featuring legalizes gaming and glitzy hotels..."

Both the entry for Vegas and Las Vegas demonstrate that the terms are synonymous and refer to the largest city in Nevada.

The Board routinely relies on dictionary definitions as evidence of geographic significance. See, e.g., *In re Cotter & Co.*, 228 U.S.P.Q. 202, 204 (TTAB 1985); *In re Broyhill Furniture Industries Inc.*, 60 U.S.P.Q.2d 1511 (TTAB 2001) (Relying on *Cassel's Italian Dictionary* and *Merriam-Webster's Geographical Dictionary*, the Board found the

term "Toscana" (or "Tuscany," in English) designated a region in Italy and had no other meaning.)⁴

The dictionary definition here confirms that Vegas is synonymous with Las Vegas: a generally known geographic location.

2. The Geographic Significance of VEGAS is illustrated by Widespread Use of the Word to refer to the city of Las Vegas, Nevada

Opposer, USPC, also submits numerous newspaper and magazine articles as well as television transcripts which illustrate how Vegas is commonly used to refer to the city of Las Vegas, Nevada. Entertainment Weekly, as shown in Index Numbers 5 and 6, refers to Vegas as a geographical place twice in the same June 3, 2005, edition: first as the location of events of the movie GO, directed by Doug Liman, and then as the location of Angelina Jolie's wedding to Billy Bob Thornton. "Vegas" was used in the same six-day period in May, from the 26th through the 31st, to refer to the geographic location of Las Vegas, Nevada, by the following well known and widely circulated publications: The Associated Press (Index 17), *Baltimore Sun* (Index 26), *Fortune Magazine* (Index 28), *Philadelphia Inquirer* (Index 33, 61, 73), *Chicago Tribune* (Index 36), *Detroit Free Press* (Index 37), *San Francisco Chronicle* (Index 44), *Washington Post* (Index 50, 91), *Sacramento Bee* (Index 63), *Orlando Sentinel* (Index 87), and even the *Las Vegas Review-Journal* (Index 82, 83). The 641 publications that comprise the Opposer's Notice of Reliance are referred to herein

⁴ The Board has also relied on dictionaries in recent decisions which were marked as NOT CITABLE AS PRECEDENT OF THE TTAB. Opposer references the following decisions as illustrative: In re Cotchett, Serial No. 78/280591 (TTAB August 5, 2005) (Exhibit B) (Board relied heavily on definitions for "Half Moon Bay" contained in the *Columbia Gazetteer of North America* and *Merriam-Webster's Geographical Dictionary*.); In re Bristol-Myers Squibb Co., Serial No. 78/222332 (TTAB July 15, 2005) (Exhibit C) (Board relied on the *American Heritage Dictionary of English Language* definition of "Princeton" as a borough in New Jersey and the seat of Princeton University and held that the reference to location of or seat of Princeton University enhanced the term's geographic significance.); In re American International Group, Inc., Serial No. 75/278430 (TTAB June 25, 2002) (Exhibit D) (Board relied, in part, on Examining Attorney's submission of the dictionary definition of "New Hampshire" which referred to its nickname as the "Granite State," as evidence that it was a geographic location.)

by Index numbers; the articles are reproduced in their entirety and listed by Index number in the Notice of Filing.

Articles reproduced from NEXIS, like the ones submitted by USPC, operate as evidence of a mark's primary significance as a generally known geographic location. The Board has relied on such evidence in the following unreported case, not citable as precedent. See, e.g., In re Fashion Group, Serial No. 76/006037 (TTAB Dec. 3, 2004) (Exhibit E) (Board found mark's primary significance as a generally known geographic location based upon dozens of NEXIS article excerpts that showed "NoLita" to be a particular place and a term derived from the phrase "North Little Italy" or "North of Little Italy.").

The Lexis and Westlaw articles submitted in this case show widespread use of the term Vegas to refer to the geographic location of Las Vegas, Nevada. Therefore, the primary significance of VEGAS is that of a geographic location.

3. **The Las Vegas Convention and Visitors' Authority advertised and used "Vegas" alone to identify the city**

Kevin Bagger, Director of Research of the Las Vegas Convention and Visitors' Authority (LVCVA) testified to the significance of Vegas as a geographic location. The LVCVA uses the marks "Only VEGAS" and "Whatever happens in Vegas, stays in Vegas" to promote tourism in the city of Las Vegas. (Bagger at 10). The LVCVA sends tourist information with the "Only VEGAS" design featured prominently on the cover. (Bagger Dep. Exhibits 27, 28).

The LVCVA has an annual advertising budget of 75 to 80 million dollars. (Bagger at 10). Expenditures on behalf of the City which refer to the location as "Only VEGAS" reach across the country. Thus, it is only natural that the City of Las Vegas has two names:

Vegas and Las Vegas, due in some respects to the efforts of the LVCVA to promote the shorter catchier "Vegas" as synonymous with the geographic area.

Mr. Bagger, a long-time resident of Las Vegas, Nevada, testified that through endless tourism promotion, the city is known by two names:

Q: Other than Las Vegas is there -- is the city known by any other term?

A: Well, we -- in our marketing campaign one of the current logos we use is "Only Vegas." That ties in to our "What happens in Vegas stays here" advertising campaign, **but it's also known as Vegas as well as Las Vegas.**

Q: And how do you know that?

A: Personal experience, living in Las Vegas for 35 years, traveling, media accounts.

(Bagger at 10.)

Thus, the evidence demonstrates the primary significance of Vegas is that of a geographical location.

4. According to the Overwhelming Evidence presented to this Board, the Primary Significance of VEGAS is that of a Geographic Location

Applicant has not produced evidence to contradict the ***primary significance*** of the term as a geographic location. However, even if a city is also known for an activity that goes on in the city, the Board has still held that the geographic relevance takes precedence.⁵ The Board has consistently recognized the geographic connotation of the mark to be the primary significance of the mark to a consumer in geographic misdescriptiveness cases even when other possible concepts may be conveyed by the

⁵ See, e.g., the following cases, marked as not citable precedent of the TTAB. McCutchin v. DuBell, Opposition No. 91156821 (July 27, 2005)("In order for a term to be *primarily* geographically descriptive, the term does not have to be 'solely geographic' as applicant suggests.") (Exhibit F). The Board has held that the term Princeton, which arguably symbolizes prestigious academic achievement rather than a town in New Jersey, was nevertheless primarily significant as a geographic location. In re Bristol-Myers Squibb Co., Serial No. 78/222332 (July 15, 2005)(Board relied on the dictionary definition of "Princeton" as a borough in New Jersey and the seat of Princeton University and held that the references to location of or seat of Princeton University enhanced its geographic significance.) (Exhibit C). In re BJIP, Inc., Serial No. 75/529080 (July 18, 2001)(The Board recognized that Cuba or Havana-style furniture was popular but that fact did not contradict the primary significance of the term "Havana" as a geographic source of the style and added to the fact that purchasers would associate the goods with that location.) (Exhibit G).

mark. In re California Innovations Inc., 66 U.S.P.Q. 2d 1853 (Fed. Cir. 2003) ("Although the mark [CALIFORNIA INNOVATIONS] may also convey the idea of a creative, laid-back lifestyle or mindset, the Board properly recognized that such an association does not contradict the primary geographic significance of the mark.").

The Board has consistently held that the primacy of a term's geographic significance outweighs all other possible connotations. In In re Bacardi & Co. Ltd., 48 U.S.P.Q. 2d 1031 (TTAB 1998) the Board stated that "even if applicant had established an association between HAVANA and a particular lifestyle of the term, as the association may be made precisely because of the primary significance of HAVANA as a city in Cuba." Similarly, the Board wrote in In re Opryland USA Inc., 1 U.S.P.Q.2d 1409 (TTAB 1986) that "[b]ecause a term [such as Nashville] may have other meanings does not necessarily alter the primacy of its geographical significance."

The dictionary definitions, newspaper and magazine articles, and testimony from a representative of the Las Vegas Convention and Visitor's Authority all demonstrate that the primary significance of Vegas is a well known geographic location. Thus, Opposer has satisfied the first prong of the California Innovations test.

B. Consumers are likely to believe that Vegas is the origin of Applicant's playing cards because of a well-known association between the goods and the geographic location.

USPC submitted evidence in its Notices of Reliance including newspaper and magazine articles and the testimony of Kevin Bagger and Dan Espenscheid to demonstrate that card playing and playing cards are associated with Vegas. Thus, USPC has proven the second element of the California Innovations test, generally referred to as the requirement of a goods-place association.

In In re Hiromichi Wada, 52 U.S.P.Q.2d 1539, 194 F.3d 1297 (Fed. Cir. 1999), the term NEW YORK WAYS GALLERY when applied to various kinds of leather bags, luggage, back packs, wallets, tote bags and the like was determined to be primarily geographically deceptively misdescriptive. The record in that case contained NEXIS excerpts showing various leather goods and handbag manufacturers located in New York supported a goods-place association between New York City and leather goods.

The excerpts USPC relies upon in this case show that the public associates Vegas with playing cards and card playing, including poker, black jack and other games. The following list of media excerpts were submitted with the Original Notice of Reliance and demonstrate a goods-place connection:

Index	Publication	Date	Use
624	<i>Boston Herald</i>	July 14, 2005	It's in the cards; Poker craze in spotlight as World Series explodes in glitzy Vegas
625.	<i>Argus Leader</i> (Sioux Falls, ND)	January 13, 2005	It's a best effort to avoid the type of disappointment Nevada officials felt last October. The U.S. mint prohibited use of gambling images, barring slot machines, playing cards..
626.	<i>USA Today</i>	July 6, 2005	Then there's fabulous Las Vegas, including oversized playing cards and dice
627.	<i>Boston Globe</i>	July 14, 2005	For Poker Players, Universal Draw of World Series Lies in Riches Thousands in Vegas Vie for \$7.5 M Prize
628.	<i>Associated Press Wire Report, as published on MSNBC.com</i>	Oct. 2, 2004 at 6:14 pm	Slot machines, playing cards, and even the games Las Vegas skyline won't be on Nevada's quarter
629.	<i>Philadelphia Enquirer</i>	July 5, 2005	In Vegas, they're playing cards
630.	<i>Baltimore Sun</i>	November 2, 2003	A Marylander sells the family business and moves to Vegas to play poker

631.	<i>Chicago Daily Herald</i>	May 27, 2005	Las Vegas playing cards from casinos like the Dunes Hotel
632.	<i>M2 Presswire</i>	June 8, 2005	Gaming Partners International Corporation.. is headquartered in Las Vegas, Nevada

The *Philadelphia Inquirer* article (Index 629) entitled "A Big Pot Adds to Poker's Allure" starts off with the sentence "In Vegas, they're playing cards, and the person who emerges from a field of more than 6,000 people to win this year's main event at the World Series of Poker is going to go home with something like 10 million." The article demonstrates the allure and high prize money available for card playing in Las Vegas, and demonstrates that Vegas is known for famous poker tournaments such as the World Series of Poker. The connection between poker and Las Vegas is also apparent in the *Baltimore Sun's* article entitled "Moving from suburban Maryland to Las Vegas to make a living playing poker? You bet your life." (Index 628).

In fact Las Vegas is so well known for playing cards that Nevada state officials considered putting the image of playing cards on the back of the state's commemorative quarter, before they were overruled by the Federal Treasury Department. See, "No Gambling Images on Nevada Quarter," msnbc.com AP wire (Index 628).

A USA Today article published on July 6, 2005, even mentions that you can have a funeral from a business called Palm Mortuary in Las Vegas. The Las Vegas funeral includes "oversized playing cards and dice." (Index 626). The fact that a Las Vegas funeral would include such iconography as oversized playing cards speaks volumes on the goods place association between the city and a deck of playing cards.

Even connections between a city and goods that are tenuous, unlike the connection USPC has shown here, have been held to be sufficient by the Board to satisfy the goods-

place association test in a geographic misdescriptiveness analysis. For instance, In re Save Venice New York, Inc., 59 U.S.P.Q.2d 1778, 259 F.3d 1346 (Fed. Cir. 2001), involved whether a New York not-for-profit corporation devoted to preserving and restoring cultural treasures of Venice, Italy, could register "The Venice Collection" with respect to potpourri, tableware made of precious and nonprecious metals, lamps, clocks, art prints, paper products, residential furniture, dinnerware, glassware, bedding and carpets. With the exception of some glass products, none of the goods originated in Venice. Nevertheless, the Court found that consumers were likely to be deceived even though the goods were only **related to** the types of goods manufactured and sold in Venice, Italy.

The following two cases which have been deemed as not citable by the Trademark Trial and Appeal Board are illustrative of other goods place associations. In In re Fashion Group S. N. C., Serial No. 76/006037 (TTAB December 3, 2004) (Exhibit E), the applicant sought to register "No-I-ita" and "NORTH LITTLE ITALY" for a wide variety of clothing. The Board found a goods-place association because the marks referred to a neighborhood of Manhattan in New York noted for trend-setting fashions.

In In re Bristol-Myers Squibb Co., Serial No. 78/222332 (TTAB July 15, 2005) (Exhibit C), the Board found that the fact that applicant had a research facility in Princeton, New Jersey supported a goods-place association between pharmaceutical products and Princeton. USPC has submitted an article (Index 632) which shows the presence of a card manufacturer, Gaming Partners International Corp., in Las Vegas, Nevada. Further, there is evidence in the record that USPC maintains a warehouse in Las Vegas for its casino business. (Espencheid at 7).

USPC has also presented testimony of Dan Espenscheid and of Kevin Bagger on the goods place association between Vegas and playing cards. Bagger, the director of research at the LVCVA, testified that Las Vegas is known for its gaming, which includes legal games of chance like slot machines, blackjack, craps and roulette. (Bagger at 9). These games, such as black jack, involve the use of playing cards. (Bagger at 10). Dan Espenscheid, Director of Casino Sales for USPC testified that there are many well-known large casinos in Las Vegas, Nevada. (Espenscheid at 11). The casinos need a replenishable supply of playing cards in order to conduct games of chance such as black jack. (*Id.* at 12). USPC and other card companies including Gemaco and GPI supply the playing cards to the casinos. (*Id.* at 13). This testimony demonstrates that Las Vegas casinos and establishments use playing cards daily in large amounts.

While USPC believes that a goods place association has been demonstrated, the board has found a goods place association even when a geographic location is not primarily known for the goods involved. In re Broyhill Furniture Industries Inc., 60 U.S.P.Q.2d 1511 (TTAB 2001), involved a North Carolina furniture corporation's effort to register "Toscana" for furniture. The registration was refused on grounds that "Toscana" (or Tuscany, in English) was primarily geographically deceptively misdescriptive. The Board found the term designated a region in Italy. The Examining Attorney produced evidence including only three Lexis/Nexis articles and several printouts from websites that referred to Tuscan furniture as well as copies of online ads for villa and apartment rentals in Tuscany that referred to Tuscan furniture. However, the Board held that the evidence produced by the Examining Attorney was sufficient to make a *prima facie* showing that there was a reasonable basis for concluding the public is likely to believe that the mark

identifies the place from which the goods originate and that the applicant's evidence was insufficient to rebut this showing. Relying, in part, on In re Save Venice, the Board concluded that:

Clearly, furniture is a product which is made in Tuscany, as it is in numerous geographic locales throughout the world, and members of the general public interest in purchasing furniture which comes from Tuscany would, during the course of an Internet search, find advertisements of the kind which have been made of record. The evidence is sufficient to establish a *prima facie* showing that the purchasing public would reasonably believe that furniture bearing the mark "TOSCANA" is manufactured or otherwise originates in Tuscany and applicant has offered nothing to rebut the goods/place association which consumers would be likely to make.

* * * *

In particular, Tuscany has been shown to be a sizeable region which produces a wide variety of products, including furniture. While Tuscany is apparently not famous or otherwise noted for its furniture, such is not a requirement in order for consumers to mistakenly believe that a goods/place association exists . . . According to the record, Tuscany is an important industrial center and, especially in the case of pieces of handcrafted furniture (which are products encompassed by the goods identified in applicant's application, such items plainly would be considered by consumers to be a natural expansion of Tuscan's longstanding handicraft industries, particularly those in wood and metal.

60 U.S.P.Q. 2d 1511, 1518.

While playing cards are obviously used in casinos and in houses throughout the country, the use of playing cards in Las Vegas has intertwined the iconography of the City of Las Vegas with playing cards and their insignia: hearts, diamonds, clubs and spades. (See Przywara Dep. Exhibits 4 and 5). Similarly, the fact that furniture is made in locales around the world other than Tuscany did not preclude the Board from finding a heightened goods place association between Tuscany and furniture. Thus, it is not relevant that other casinos exist in the United States that also use playing cards; the relevant question remains whether a goods-place association exist between the geographic location at issue and the goods for which trademark protection is sought.

The evidence presented in this case shows a clear association between Las Vegas and playing cards. Gambling and poker are alive and thriving in Las Vegas, and concomitantly, use and sale of playing cards is thriving in Las Vegas. USPC has shown through testimony and substantial documentary evidence that playing cards have a heightened association with the geographic location of Vegas.

C. Applicant's misrepresentation that its playing cards are associated with "Vegas" would materially affect the public's decision to purchase the goods.

The fact that playing cards are connected with or are used in Vegas is material to a consumer's purchasing decision. USPC has offered evidence which demonstrates a competitive market for cancelled casino cards which were used in many Las Vegas casinos. Further, recent case law authorizes the Board to assume that the geographical misrepresentation plays a material part in the decision to buy VEGAS playing cards when the goods-place association is heightened. Thus, USPC has satisfied the third prong of the California Innovations test and the VEGAS mark should be refused registration.

In the Colorado Steakhouse case, this Board found that "an inference of materiality arises where there is a showing of a 'heightened association' between the [goods] and the geographic place." In re Consolidated Specialty Restaurants, 71 U.S.P.Q.2d 1921, 1928 (TTAB 2004). USPC has submitted testimony and articles submitted via Notice of Reliance which proves that there is a heightened association between playing cards and Las Vegas, Nevada.

Furthermore, the existence of a robust market for cancelled casino cards from Vegas demonstrates that consumers are interested in obtaining cards that have an origin or associated with Las Vegas. Playing cards that are used in a casino for table games are cancelled before being offered sold to the public. The cancellation involves a small

physical alteration of the cards. (Bagger at 20). Cards are cancelled so that people can not bring them back into the casino to cheat at the card games, which is why cancelled cards are designed to be easily distinguishable from cards that are still in play. (Bagger at 20).

Casino gift shops, located on-site at several Vegas casinos, sell their cancelled casino cards to those wishing to buy a deck of cards that was actually used on the Vegas casino tables. (Bagger at 19-20). Cancelled cards from Vegas casinos are also sold to the public at The Gambler's General Store. (Espenscheid at 39). The internet is also a popular marketplace for cancelled casino cards from Las Vegas. Ms. Przywara testified that she printed information from numerous websites demonstrating a market for such cards. (Przywara at 11-16).

Cards that are associated with Las Vegas add an authenticity and cultural cachet to the playing cards. This desire for authenticity is demonstrated in a New York Times article that invites people throwing a poker night gathering to make the mood seem more authentic. "With the right accouterments, like a Montecristo in one hand and a glass of whiskey in the other, you can pretend you're among the new breed of young card sharks racking up big wins in Las Vegas." (Index at 637). One way to achieve such a feeling is to "deal from a deck of used playing cards from Las Vegas casinos that frequently replace their cards." (Id.)

If consumers believe that the playing cards originated or were associated with Las Vegas such knowledge may materially affect their decision whether to purchase the VEGAS playing cards. The evidence USPC has offered as to the market for cancelled casino cards from Vegas demonstrates that association of the cards with Las Vegas can be a material factor in a consumer's decision.

Even without such evidence, the goods-place association between Las Vegas and playing cards is so strong that the Board may presume that the geographical connection between the place and the goods led to the consumer's decision to purchase the goods. In In re Hiromichi Wada, 52 U.S.P.Q. 2d 1539, 1540-41, 194 F.3d 1297, 1299-1300 (Fed. Cir. 1999), evidence presented showed that New York was well-known as a place where leather goods were designed and manufactured and upon encountering the goods bearing the proposed mark, consumers would believe that the goods originated in New York, "a world-renowned fashion center ... well-known as a place where goods of this kind are designed, manufactured, or sold."

Therefore, the Board reasoned that a strong goods-place association means that it was correct to infer that consumers would use the geographic information in a product's name in a material way.⁶ In California Innovations, the Board wrote that "if there is evidence that goods like applicant's or goods related to applicant's are a principal product of the geographical area named by the mark, then the deception will most likely be found material and the mark, therefore, deceptive." 66 U.S.P.Q. 2d at 1857-58, citing, In re House of Windsor, Inc., 221 U.S.P.Q. 53, 57 (TTAB 1983). Furthermore, "if [a] place is noted for the particular goods, a mark for such goods which do not originate there is likely to be deceptive under §2(a) and not registerable under any circumstances." Id., citing, In re Loew's Theatres, 226 U.S.P.Q. 865, 868 n.6, 769 F.2d 764, 768 n.6 (Fed. Cir. 1985).

The evidence shows that an inference of materiality is appropriate in this case. USPC has demonstrated through the existence of a market for cancelled casino cards from

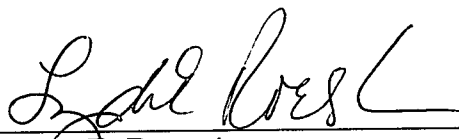
⁶ Similarly, in a decision marked as "not citable as precedent," the Board held that it would materially affect a purchase maker's decision that Zhiguly Beer came from a region of Russia known for its beer. Donya, Ltd. v. Donya Michigan Co., Cancellation No. 92033012 (TTAB Sept. 6, 2005) (Exhibit G).

Vegas that an association between the cards and Las Vegas is a material factor in a consumer's purchase decision. Having satisfied the third prong of the California Innovations' test, USPC submits the Board should refuse registration of Applicant's VEGAS application.

V. Conclusion

Opposer respectfully requests that Application number 78/253725 be refused registration based on 15 USC §1052 (c)(3) which bars the registration of geographically deceptively misdescriptive trademarks such as VEGAS. USPC has conclusively demonstrated through testimony and exhibits that Vegas is a well known geographic location from which Opposer's product does not originate, that playing cards have a strong goods-place association with the geographic location and that such an association is material to a potential purchaser of Applicant's goods. Accordingly, the Board should sustain the opposition and refuse registration.

Dated: **March 13, 2006**

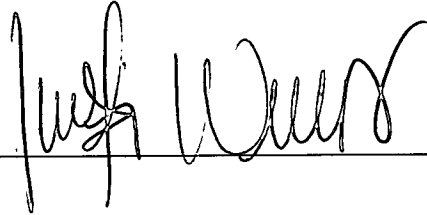


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Attorney for Opposer
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by e-mail and U.S. Mail on this 13th day of March, 2006 to Timothy A. Flory, Van Dyke, Gardner, Linn & Burkhart, LLP, 2851 Charlevoix Drive, S.E., P.O. Box 888695, Grand Rapids, MI 49588-8695.

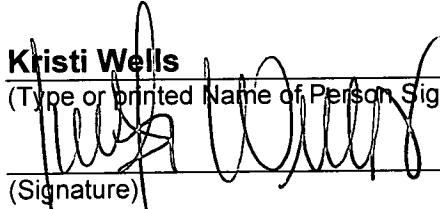


CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on the date shown below.

Kristi Wells

(Type or printed Name of Person Signing Certificate)



(Signature)

March 13, 2006

(Date)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**THE UNITED STATES PLAYING
CARD COMPANY,**

Opposer,

v.

HARBRO, LLC,

Applicant.

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Opposition No.: 91162078

NOTICE OF FILING

Opposer United States Playing Card Company (USPC) hereby gives notice that the Opposer has filed the following documents with the Trademark Trial and Appeal Board today, March 13, 2006. Due to the voluminous nature of the documents filed, Opposer is sending the Board and Applicant hard copies of the attachments by First Class, U.S. Mail.

DEPOSITIONS

Deposition of Kevin Bagger

Deposition of Daniel Espenscheid

Deposition of Kathryn Knue Przywara, Esq.

Deposition of Joseph Robinette, Esq.

OPPOSER'S EXHIBITS FROM THE DEPOSITION OF KEVIN BAGGER

- 25. Notice of testimony deposition and subpoena duces tecum
- 26. *Las Vegas Official Visitors Guide* for Winter/Spring 2005
- 27. *Las Vegas Show Guide*
- 28. *Las Vegas Area Map and Visitor's Guide*

OPPOSER'S EXHIBITS FROM THE DEPOSITION OF DANIEL ESPENSCHIED

OPPOSER'S EXHIBITS FROM THE DEPOSITION OF DANIEL ESPENSCHIED

1. Amended notice of testimony deposition
2. Photo of Las Vegas Strip
3. www.1st-las-vegas.com printout
4. www.paulsongaming.com printout
5. www.visitlasvegas.com printout
6. www.vegas.com printout
7. Vegas brand playing cards (unsealed)
8. Vegas brand playing cards (sealed)
9. Joker playing card
10. www.gamelandsports.com printout
11. vivavegas.co.uk printout
12. www.thegamesaloon.com printout
13. www.oldvegaschips.com printout
14. search.ebay.com printout
15. www.pokerchipwholesale.com printout
16. www.nationalgeographic.com printout
17. travel.discovery.com printout
18. *Where* Magazine
19. *What's On* magazine
20. MGM Grand playing cards
21. Bellagio playing cards
22. Mirage playing cards
23. Suncoast playing cards
24. Mandalay Bay playing cards
25. New York New York playing cards
26. Excalibur playing cards
27. *Today in Las Vegas* magazine

OPPOSER'S EXHIBITS FROM DEPOSITION OF KATHRYN KNUE PRZYWARA, ESQ.

1. Notice of Testimony Depositon
2. www.gpigaming.com printout
3. www.lasvegas100merchandise.com printout
4. Charm bracelet
5. Key ring
6. www.gamblersgeneralstore.com printout
7. www.oldvegaschips.com printout
8. www.oldvegaschips.com printout

OPPOSER'S EXHIBITS FROM DEPOSITION OF JOSEPH A. ROBINETTE, ESQ.

1. Notice of Testimony Deposition
2. Promotional advertisement
3. Map of stores participating in promotion

NOTICE OF RELIANCE DOCUMENTS

VOLUME I

	Publication	Date	Use
1.	<i>Merriam - Webster's Geographical Dictionary Third Edition</i> (not retrieved from LEXIS/NEXIS)	©1997	Definitions of Las Vegas and Vegas
2.	<i>MSN - Encarta Encyclopedia Article</i> (not retrieved from LEXIS/NEXIS)	©1993-2005	Entry on Las Vegas, Nevada
3.	NO EXHIBIT		
4.	NO EXHIBIT		
5.	<i>Entertainment Weekly</i>	June 3, 2005	A movie about teens gone wild ...ride through L.A. and Vegas
6.	<i>Entertainment Weekly</i>	June 3, 2005	Angelina Jolie and Billy Bob Thornton tie the knot May 5 in Vegas
7.	<i>Chicago Tribune</i>	June 1, 2005	What happens in Vegas may stay in Vegas
8.	<i>Curve</i>	June, 2005	... high-rollin' types, Vegas may be more your style
9.	<i>FSB</i>	June, 2005	Drive 35 minutes northwest from Vegas ... decidedly un-/Vegas amenities...
10.	<i>Market Wire</i>	June 1, 2005	... at places like Cabo or Vegas?
11.	<i>The Myrtle Beach Sun-News</i>	June 1, 2005	... and Tower in Vegas with a Sin City building of her [Ivana Trump] own.
12.	<i>San Jose Mercury News</i> (California)	June 1, 2005	I haven't seen the show in Vegas, but the view...
13.	<i>Texas Monthly</i>	June, 2005	... the self-make billionaire headed to Vegas with a goal...
14.	<i>The Vancouver Province</i> (British Columbia)	June 1, 2005	Donald Trump is getting some competition in Vegas from a rival ...
15.	<i>Washingtonian</i>	June, 2005	Power poker players in Vegas
16.	<i>Associated Press Financial Wire</i>	May 31, 2005	... flights from the Chinese mainland to Vegas ... Macau may soon overtake Vegas...
17.	<i>The Associated Press</i>	May 31, 2005	Some Vegas hotels added family attractions...
18.	<i>The Associated Press State & Local Wire</i>	May 31, 2005	We picked Vegas because ...
19.	<i>Contra Costa Times</i>	May 31, 2005	... gig at a new Vegas Trump hotel ...
20.	<i>Geelong Advertiser</i>	May 31, 2005	... managing the troupe in Vegas ...

	Publication	Date	Use
21.	<i>High Point Enterprise</i>	May 31, 2005	Original plans for the Vegas market ...
22.	<i>Inland Valley Daily Bulletin</i> (Ontario)	May 31, 2005	... while detectives in Vegas were...
23.	<i>Newsday</i>	May 31, 2005	I'd be barred for life, which I am now in Vegas...
24.	<i>Newsday</i>	May 31, 2005	In Vegas, they overtly told me to get the hell out.
25.	<i>The Orange County Register</i>	May 31, 2005	Last year, Vegas developers sought permission to build ...
26.	<i>The Baltimore Sun</i>	May 30, 2005	... picked up the Vegas trip tab.
27.	AMERICAN MORNING TV show transcript	May 30, 2005 7:00 a.m. EST	... these are people who live in red hot markets, Miami, Vegas, you name it ...
28.	<i>Fortune</i>	May 30, 2005	... when the speculating boom hit Vegas
29.	<i>The Halifax Daily News</i> Nova Scotia	May 30, 2005	... attending a Vegas wedding.
30.	<i>Lexington Herald Leader</i>	May 30, 2005	It's kind of like going to Vegas.
31.	<i>The Mirror</i>	May 30, 2005	I saw Rod in Vegas ...
32.	<i>The New York Post</i>	May 30, 2005	... had not gotten permission to go to Vegas ...
33.	<i>Philadelphia Inquirer</i>	May 30, 2005	...no personal financial gain at the Vegas meeting.
34.	<i>The Sports Network</i>	May 30, 2005	... Sacramento Kings and the Palms casino here in Vegas ...
35.	<i>VARBusiness</i>	May 30, 2005	... after the May show in Vegas ...
36.	<i>Chicago Tribune</i>	May 29, 2005	... as anyone who has been to Vegas can attest.
37.	<i>Detroit Free Press</i>	May 29, 2005	... players expected to descend on Vegas over six weeks ...
38.	<i>The Gazette</i>	May 29, 2005	... both Mystere and Ka on a recent Vegas trip ...
39.	<i>Hindustan Times</i>	May 29, 2005	... go with my mother to Vegas so I ...
40.	<i>The Jakarta Post</i>	May 29, 2005	And if he gets to Vegas, what then?
41.	<i>Lincoln Journal Star</i>	May 29, 2005	Since Vegas is within driving distance ...
42.	<i>The New York Post</i>	May 29, 2005	... marathon that began in Vegas ...
43.	<i>The People</i>	May 29, 2005	His welcome in Vegas as an unknown ...
44.	<i>The San Francisco Chronicle</i>	May 29, 2005	<i>The History of Vegas</i> by Jodi Angel ...
45.	<i>The Sunday Independent</i> Ireland	May 29, 2005	... to leave Memphis and go to Vegas at certain times ...

	Publication	Date	Use
46.	<i>Sunday Mail</i> Scotland	May 29, 2005	... to reach the final table in Vegas
47.	<i>Sunday Mirror</i>	May 29, 2005	He still plays Vegas four times a year ...
48.	<i>Sunday Times</i> London	May 29, 2005	... unlucky guy employed by a Vegas casino ...
49.	<i>Time-Picayune</i>	May 29, 2005	... has a gig in Vegas just before Barry's next concert.
50.	<i>The Washington Post</i>	May 29, 2005	His years in Vegas, ...
51.	<i>The Wichita Eagle</i>	May 29, 2005	... domestic U.S. vacation, such as Orlando or Vegas ...
52.	<i>Bristol Evening Post</i>	May 28, 2005	... who will fly out to meet him in Vegas ...
53.	<i>Channel NewsAsia</i>	May 28, 2005	However you slice or dice Vegas, one thing is for sure, the tourists just keep coming.
54.	<i>Gold Coast Bulletin</i> Australia	May 28, 2005	... once a dancer at Vegas's Desert Inn ...
55.	<i>The Guardian</i> London	May 28, 2005	... says he always feels phoney in Vegas ...
56.	<i>Guelph Mercury</i> Ontario, Canada	May 28, 2005	... who now lives in Vegas ...
57.	<i>The Journal News</i>	May 28, 2005	Her fiancé is going to Vegas ...
58.	<i>The Mirror</i>	May 28, 2005	... and a trip to Vegas is the only roll ...
59.	<i>The Montgomery Advertiser</i>	May 28, 2005	They spent the weekend in Vegas ...
60.	<i>The Montgomery Advertiser</i>	May 28, 2005	When we showed up to play in Vegas ...
61.	<i>Philadelphia Inquirer</i>	May 28, 2005	... at the Wynn Hotel and Casino in Vegas ...
62.	<i>Press & Sun-Bulletin</i>	May 28, 2005	A trend that's very hot in Vegas ...
63.	<i>Sacramento Bee</i>	May 28, 2005	... during a Vegas concert ...
64.	<i>The Toronto Sun</i>	May 28, 2005	... when Kim called him from Vegas.
65.	<i>Albuquerque Tribune</i>	May 27, 2005	... Golden Nugget Hotel in downtown Vegas ...
66.	<i>Business Wire</i>	May 27, 2005	... Evans returned to Vegas to begin ...
67.	<i>The Capital Times</i>	May 27, 2005	... consumer electronics show in Vegas ...
68.	<i>Channel NewsAsia</i>	May 27, 2005	... for many resorts in Vegas ...
69.	<i>Chicago Tribune</i>	May 27, 2005	Vegas has its Vegas spectacles. New York has ...
70.	<i>The Commercial Appeal</i>	May 27, 2005	... all over the country ... Vegas, Dallas, Atlanta, Iowa ...
71.	<i>Copley News Service</i>	May 27, 2005	... is coming to Vegas.
72.	<i>The Daily News of Los Angeles</i>	May 27, 2005	Instead of doing a Vegas trip ...

	Publication	Date	Use
73.	<i>Philadelphia Inquirer</i>	May 27, 2005	Forget Vegas; this time the hip Ocean cats ...
74.	<i>Richmond Times Dispatch</i>	May 27, 2005	... 24-hour marathons at the Bellagio in Vegas.
75.	<i>St. Johns' Telegram Newfoundland</i>	May 27, 2005	... for a trip to Vegas or anything.
76.	<i>Tampa Tribune</i>	May 27, 2005	... A Winner in Vegas
77.	<i>Akron Beacon Journal</i>	May 26, 2005	A lot of people want to go to Vegas, ...
78.	<i>Daily ews</i>	May 26, 2005	The star even invited them to the Vegas set ...
79.	<i>The Daily Oklahoman</i>	May 26, 2005	... go to Vegas and lose it all in one roll ...
80.	<i>The Frontrunner</i>	May 26, 2005	... co-hosting a fundraiser in Vegas.
81.	<i>The Hill</i>	May 26, 2005	... draw some of Washington's top names to Vegas ...
82.	<i>Las Vegas Review-Journal</i>	May 26, 2005	... about having a second home in Vegas, ...
83.	<i>Las Vegas Review-Journal</i>	May 26, 2005	... I might plan to be in Vegas at that time.
84.	<i>The Ledger</i>	May 26, 2005	I've been to Vegas plenty of times, ...
85.	<i>The Miami Herald</i>	May 26, 2005	... Todd English kitchens including Olives in Boston, D.C., Vegas and Tokyo ...
86.	<i>national-jeweler.com</i>	May 26, 2005	Memorial lecture in Vegas ...
87.	<i>Orlando Sentinel</i>	May 26, 2005	... Director for the Plaza Hotel and Casino in Vegas.
88.	<i>Rocky Mountain News</i>	May 26, 2005	... important thing right now is for us to be in Vegas.
89.	<i>Tulsa World</i>	May 26, 2005	... found that state resident preferred Vegas more than 2-to-1.
90.	<i>The Vancouver Province British Columbia</i>	May 26, 2005	... we assume the sports book in Vegas thinks ...
91.	<i>The Washington Post</i>	May 26, 2005	It was during the Vegas visit that ...
92.	<i>Variety</i>	May 23, 2005	... the integrity of the awards had been compromised when "Q" quickly dumped them to play Vegas.
93.	<i>South Bend Tribune</i>	May 22, 2005	NBA reps revisiting Vegas
94.	<i>Albuquerque Journal</i>	May 22, 2005	... to fight on the Hopkins-Taylor card in Vegas ...
95.	<i>The Atlanta Journal-Constitution</i>	May 22, 2005	... a good shot at winning Daytona, Vegas and California.
96.	<i>The Boston Herald</i>	May 22, 2005	... was eager to catch Celine in Vegas, ...
97.	<i>Connecticut Post</i>	May 22, 2005	I played with Paula Creamer in Vegas ...

	Publication	Date	Use
98.	<i>The Dallas Morning News</i>	May 22, 2005	Luxury ride rolls in Vegas
99.	<i>The Desert Sun</i>	May 22, 2005	... hops a bus and goes to Vegas ...
100.	<i>Great Falls Tribune</i>	May 22, 2005	One big-name project in Vegas; the Andre Agassi College Preparatory Academy
101.	<i>The Herald</i>	May 22, 2005	... trips to California and Vegas....
102.	<i>The Miami Herald</i>	May 22, 2005	... a trio from Havana Night Club, the Vegas show featuring ...
103.	<i>The New York Times</i>	May 22, 2005	... absconded to Vegas ...
104.	<i>Philadelphia Inquirer</i>	May 22, 2005	... simply known as Binions's in downtown Vegas.
105.	<i>Plain Dealer</i>	May 22, 2005	We went to Vegas together 11 times ...
106.	<i>Times-Picayune</i>	May 22, 2005	... (2007) All-Star Game coming to Vegas.
107.	<i>The Washington Post</i>	May 22, 2005	... to make a debauched night in Vegas disappear ...
108.	<i>Winnipeg Sun Manitoba</i>	May 22, 2005	... win the trip to Vegas, ...
109.	<i>GOOD MORNING AMERICA</i> TV show, ABC	May 21, 2005 7:00 am ET	... if you're headed to Vegas.
110.	<i>Copley News Service</i>	May 21, 2005	... and he wants to go to Vegas ...
111.	<i>Daily Town Talk</i>	May 21, 2005	... four round-robin games in the Vegas tournament...
112.	<i>The Daily Telegraph</i> London	May 21, 2005	... A sense of History? In Vegas? Come on!
113.	<i>Reno Gazette-Journal</i>	May 21, 2005	... are of the quality you see in Vegas ...
114.	<i>Spokesman Review</i>	May 21, 2005	We successfully avoided Vegas one more time, ...
115.	<i>The Daily News of Los Angeles</i>	May 20, 2005	... as the residential outskirts of Vegas.
116.	<i>The Desert Sun</i>	May 20, 2005	Cities send teams to Vegas for shopping centers convention
117.	<i>Detroit Free Press</i>	May 20, 2005	... luxury suite in a Vegas hotel ...
118.	<i>Las Vegas Review-Journal</i>	May 20, 2005	... especially being from Vegas, ...
119.	<i>Pasadena Star-News</i>	May 20, 2005	... Vegas hotelier, Steve Wynn ...
120.	<i>Sacramento Bee</i>	May 20, 2005	... \$1 million jackpot in Vegas ...
121.	<i>Springfield News-Leader</i>	May 20, 2005	... flew 10 family member to Vegas for the ceremony.
122.	<i>Sun-Sentinel</i>	May 20, 2005	... two- or three-day junket to Vegas.
123.	<i>The Vancouver Sun</i> British Columbia	May 20, 2005	A Vegas news paper reports ...
124.	<i>backstage.com</i>	May 19, 2005	They have theatre in Vegas!
125.	<i>Birmingham Post</i>	May 19, 2005	... I became a headliner in Vegas ...
126.	<i>The Denver Post</i>	May 19, 2005	... that references poker in Vegas.

	Publication	Date	Use
127.	<i>The Denver Post</i>	May 19, 2005	... it's not like playing the slots in Vegas ...
128.	<i>The News & Observer</i>	May 19, 2005	... she's a fixture in Vegas, ...
129.	<i>The Post-Standard</i>	May 19, 2005	... to be able to go to Vegas ...
130.	<i>Toledo Blade</i>	May 19, 2005	... produced a Vegas show ...
131.	<i>Western Morning News</i>	May 19, 2005	... at one of his Vegas shows: ...
132.	<i>Albuquerque Journal</i>	May 18, 2005	... well, it's Vegas.
133.	<i>Associated Press</i>	May 18, 2005	... will have 57 meetings in Vegas with retailers ...
134.	<i>Birmingham Evening Mail</i>	May 18, 2005	... and went to Vegas on the spur of the moment.
135.	<i>Cablefax Daily</i>	May 18, 2005	... aired live from Vegas last night
136.	<i>The Capital Times</i>	May 18, 2005	... "escort service" operator in Vegas.
137.	<i>Daily News</i>	May 18, 2005	... an annulled marriage in Vegas.
138.	<i>Detroit Free Press</i>	May 18, 2005	... luxury suit in a Vegas hotel ...
139.	THE O'REILLY FACTOR TV Show	May 18, 2005 8:37 pm EST	... I ran into him, Belinda, in Vegas
140.	<i>Fresno Bee</i>	May 18, 2005	... How far to Vegas?
141.	<i>The Hollywood Reporter</i>	May 18, 2005	It's Vegas, baby, for Greenberg Taurig
142.	<i>Las Vegas Review-Journal</i>	May 18, 2005	Urban wasn't in Vegas to Celebrate
143.	TODAY TV Show, NBC	May 18, 2005 7:00 am EST	Fun playing poker with you in Vegas, too.
144.	<i>The New York Post</i>	May 18, 2005	... enjoyed a memorable two weeks in Vegas.
145.	<i>Philadelphia Daily News</i>	May 18, 2005	... Cole plans to move to Vegas ...
146.	<i>Philadelphia Daily News</i>	May 18, 2005	... I've had most of my fights in Vegas. ...
147.	<i>Reno Gazette-Journal</i>	May 18, 2005	Those Vegas schools are really solid.
148.	<i>San Antonio Express-News</i>	May 18, 2005	And all the other hotels in Vegas.
149.	<i>The San Francisco Chronicle</i>	May 18, 2005	But Vegas id different.
150.	<i>The San Francisco Chronicle</i>	May 18, 2005	This is Vegas, after all.
151.	<i>The Santa Fe New Mexican</i>	May 18, 2005	... high-concept restaurants enter the region -- especially in Vegas.
152.	<i>The Seattle Times</i>	May 18, 2005	... a rock star destined for Vegas, ...
153.	<i>The Tennessean</i>	May 18, 2005	... ACM finds itself after 40 years, move to Vegas, ...
154.	<i>The Tennessean</i>	May 18, 2005	... he apologized for not being in Vegas ...
155.	<i>The Tennessean</i>	May 18, 2005	... on his tour bus, which wheeled everybody to Vegas.
156.	CNN LARRY KING LIVE TV Show	May 17, 2005	Why has Donald Trump not come to Vegas until Now?

	Publication	Date	Use
157.	<i>Cox News Service</i>	My 17, 2005	... and hotel expenses that come with staying in Vegas ...
158.	<i>The Denver Post</i>	May 17, 2005	... Silhouette dancing (a hit in Vegas), ...
159.	<i>Las Vegas Review-Journal</i>	May 17, 2005	... free tickets to the July 2 'Vegas Rocks 100' outdoor concert...
160.	<i>Las Vegas Review-Journal</i>	May 17, 2005	Vegas hosts annual recognition show
161.	<i>Las Vegas Review-Journal</i>	May 17, 2005	The festival also spotlights several Vegas-themed features ...
162.	<i>Las Vegas Review-Journal</i>	May 17, 2005	Vegas is a great defensive team, ...
163.	<i>The Macon Telegraph</i>	May 17, 2005	... like a weekend in Vegas.
164.	<i>The Miami Herald</i>	May 17, 2005	... Marlins ownership was hobnobbing in Vegas ...
165.	<i>The New York Times</i>	May 17, 2005	... and even later nights in Vegas.
166.	<i>Anchorage Daily News</i>	May 16, 2005	... and attend those events in Vegas.
167.	<i>Broadcasting and cable</i>	May 16, 2005	<i>Party @ The Palms</i> showcases revelry at the Vegas
168.	<i>Buffalo News</i>	May 16, 2005	As they say in Vegas ...
169.	<i>Business Week</i>	May 16, 2005	Having bought and sold two Vegas casinos ...
170.	<i>Charlotte Observer</i>	May 16, 2005	If it's OK to go to Vegas to do it, ...
171.	<i>Dayton Daily News</i>	May 16, 2005	... and she moved to Ames, Iowa - from Vegas ...
172.	<i>HFN The Weekly Newspaper for the Home Furnishing Network</i>	May 16, 2005	... transplanted Unica to Vegas several years ago...
173.	<i>Las Vegas Review-Journal</i>	May 16, 2005	... for her painting 'A Little Bit of Vegas.'
174.	<i>Las Vegas Review-Journal</i>	May 16, 2005	... we thought, Vegas being the Extreme eye-candy town it is ...
175.	<i>TODAY TV Show - NBC</i>	May 16, 2005 7:00 am EST	Happy birthday, Vegas.

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	Publication	Date	Use
176.	<i>People</i>	May 16, 2005	... the couple were married in Vegas ...
177.	<i>People</i>	May 16, 2005	... had a girls' weekend in Vegas ...
178.	<i>Plain Dealer</i>	May 16, 2005	... whether it's gambling in Vegas or on the stock market.
179.	<i>The Providence Journal</i>	May 16, 2005	... Mora will face Manfredo in Vegas.

	Publication	Date	Use
180.	<i>The Tennessean</i>	May 16, 2005	... wear "We're in Vegas" like insurance convention attendees wear "Hello, my name is..."
181.	<i>Time Magazine</i>	May 16, 2005	... to a former Vegas show girl
182.	<i>Bicycle Retailer and Industry News</i>	May 15, 2005	"What happens in Vegas stays in Vegas: ...
183.	<i>The Boston Globe</i>	May 15, 2005	While major Vegas shows usually ...
184.	<i>Buffalo News</i>	May 15, 2005	Athletics could put baseball in Vegas by ...
185.	<i>Detroit Free Press</i>	May 15, 2005	... you can ride some of the most thrilling coasters in Vegas ...
186.	<i>They Myrtle Beach Sun-News</i>	May 15, 2005	Vegas is certainly big for us, and there are some destination out West ...
187.	<i>The New York Times</i>	May 15, 2005	... events for which the wealthy Vegas visitors ...
188.	<i>Newsday</i>	May 15, 2005	... when I was busy working in Vegas.
189.	<i>The Record</i>	May 15, 2005	You get to Vegas and you look around ...
190.	<i>The Record</i>	May 15, 2005	Reality is what Vegas says it is ...
191.	<i>Salt Lake Tribune</i>	May 15, 2005	... The Beatles played Vegas ...
192.	<i>DOLANS UNSCRIPTED TV Show - CNN</i>	May 14, 2005	... slot machines are the most popular game in Vegas ...
193.	<i>Las Vegas Review-Journal</i>	May 14, 2005	... Vegas is getting big, but it's still like a small town.
194.	<i>Milwaukee Journal Sentinel</i>	May 14, 2005	... I was in Vegas, and it took over.
195.	<i>The Post-Standard</i>	May 14, 2005	Vegas firm targets casino for Buffalo's outer harbor
196.	<i>The Times Union</i>	May 14, 2005	We've been to Vegas, Chicago.
197.	<i>The Associated Press</i>	May 13, 2005	... extorting Celine Dion's husband in Vegas
198.	<i>The Boston Herald</i>	May 13, 2005	What's built in Vegas stays in Vegas.
199.	<i>Albuquerque Tribune</i>	May 12, 2005	Then there's the body discovered outside of Vegas.
200.	<i>Albuquerque Journal</i>	May 12, 2005	I love my state, but when you fight in Vegas you get that exposure
201.	<i>Albuquerque Journal</i>	May 12, 2005	... football or basketball teams are required to travel to Vegas ...
202.	<i>Arkansas Democrat-Gazette</i>	May 12, 2005	... we'd have a job in Vegas tomorrow.
203.	<i>Business Wire</i>	May 12, 2005	... as part of the BV Vineyard to Vegas tour.
204.	<i>The Dallas Morning News</i>	May 12, 2005	We're going to Vegas and you're coming with us.
205.	<i>The Express</i>	May 12, 2005	She is no Britney Spears deciding to get married in Vegas on a whim.

	Publication	Date	Use
206.	<i>Las Vegas Review-Journal</i>	May 12, 2005	... Howard Hughes during his mania-filled Vegas years.
207.	<i>Las Vegas Review-Journal</i>	May 12, 2005	... none of the glamour that drove Old Vegas.
208.	<i>Los Angeles Times</i>	May 12, 2005	A slammin' club is now a must for Vegas hotels ...
209.	SCARBOROUGH COUNTRY TV Show - MSNBC	May 12, 2005 10:00 pm EST	She ran away, went to Vegas.
210.	<i>The Myrtle Beach Sun-News</i>	May 12, 2005	Thursday Vegas Get-Away
211.	TALK OF THE NATION Radio Show - NPR	May 12, 2005 3:00 am EST	I enjoy Vegas.
212.	TALK OF THE NATION Radio Show - NPR	May 12, 2005 2:00 am EST	Vegas was going through one of its bust periods ...
213.	<i>The Orange County Register</i>	May 12, 2005	... 20 minutes down the road from Vegas ...
214.	<i>The San Diego Union-Tribune</i>	May 12, 2005	The Tide went 3-1 in Vegas ...
215.	<i>South China Morning Post</i>	May 12, 2005	... at the slots one night in Vegas.
216.	<i>The Sports Network</i>	May 12, 2005	... the biggest concentration in downtown Vegas.
217.	<i>Tampa Tribune</i>	May 12, 2005	... who will head to Vegas this weekend
218.	<i>Winston-Salem Journal</i>	May 12, 2005	You have a better chance in Vegas than you do farming.
219.	<i>FDCH Political Transcripts</i>	May 12, 2005	Re Social Security reform ... lose it in Vegas.
220.	<i>Chicago Tribune</i>	May 11, 2005	... to reveal details about that time in Vegas when ...
221.	<i>Cleveland Scene</i>	May 11, 2005	... and becoming a dancer in Vegas?
222.	CNN CROSSFIRE TV Show - CNN	May 11, 2005 4:30 pm EST	... what happens in Vegas should stay in Vegas.
223.	<i>Cox News Service</i>	May 11, 2005	Chavez also left Vegas with a torn rotator cuff ...
224.	<i>Cox News Service</i>	May 11, 2005	... he feels more like Vegas, projecting a sort of Redneck Rat Pack image...
225.	<i>Daily Star</i>	May 11, 2005	The childhood pas wed in Vegas ...
226.	<i>Desert Morning News</i>	May 11, 2005	... it's still about the only thing in Vegas I'll bet on.
227.	<i>FD Wire</i>	May 11, 2005	Then there's a nine nights' stays at one of the hotels in Vegas ...
228.	<i>Geelong Advertiser</i>	May 11, 2005	We went to Vegas for the final round ...
229.	<i>The Journal News</i>	May 11, 2005	There's even a half-iron in Vegas now. ...
230.	<i>Comtex News Network, Inc.</i>	May 11, 2005	... with new businesses and that created excitement in Vegas.

	Publication	Date	Use
231.	Los Angeles Times	May 11, 2005	... which, in Vegas time, might as well have been the 1850s.
232.	The Miami Herald	May 11, 2005	Sunday, Vegas turns 100 years old.
233.	DATELINE NBC TV Show - NBC	May 11, 2005 8:00 am EST	Did they kill a Vegas Millionaire ...
234.	The News & Observer	May 11, 2005	Folks are going to Vegas
235.	The News-Press	May 11, 2005	... but that's not enough for Vegas
236.	Ottawa Citizen	May 11, 2005	At the Vegas run we're putting together ...
237.	Palm Beach Post	May 11, 2005	... saying they're too much like Vegas-style gambling machines.
238.	Philadelphia Daily News	May 11, 2005	.. of dollars from a Vegas strip club owner.
239.	Riverfront Times	May 11, 2005	... and go see this Vegas virgin ...
240.	The San Diego Union-Tribune	May 11, 2005	A lot of us go down to Vegas quite a few times ...
241.	SF Weekly	May 11, 2005	... that belongs at a Vegas wedding?
242.	St. Petersburg Times	May 11, 2005	... You judge free trips to Vegas, ...
243.	The Toronto Sun	May 11, 2005	... watching from a sports book in Vegas, ...
244.	The Toronto Sun	May 11, 2005	... will be held in Vegas for Celtic backers.
245.	CNN.com	May 11, 2005	Prosecutors say Chao went to Vegas on a desperate bid ...
246.	adweek.com	May 10, 2005	... with any of the big new hotels in Vegas.
247.	Chicago Tribune	May 10, 2005	Weekend Marriage in Vegas
248.	Citywire	May 10, 2005	Vegas consulting business had a very strong year ...
249.	Citywire	May 10, 2005	ManU goes to Vegas ...
250.	CNN LARRY KING LIVE TV Show	May 10, 2005 9:00 pm EST	Brad and I did a gig together in Vegas.
251.	Daily News	May 10, 2005	I booked myself a standup gig at the Riviera her in Vegas.
252.	FD Wire	May 10, 2005	... weather-related delays in Arizona, Vegas, and some other areas
253.	Fort Worth Star Telegram	May 10, 2005	... Including that crazy 55-hour marriage in Vegas ...
254.	Las Vegas Review-Journal	May 10, 2005	If Vegas slacks off, stocks may go down ...
255.	Las Vegas Review-Journal	May 10, 2005	You look at us, you look at Coronado, you look at Vegas ...
256.	The Miami Herald	May 10, 2005	... a show currently housed only in Vegas and Orlando...
257.	Monterey County Herald	May 10, 2005	I feel like I'm in Vegas when I hear ...
258.	TALK OF THE NATION Radio Show - NPR	May 20, 2005 2:00 am EST	... met anybody who could beat the game in Vegas?

	Publication	Date	Use
259.	<i>Philadelphia Daily News</i>	May 10, 2005	Boxing writers dinner brings out the stars in Vegas
260.	<i>PR Newswire US</i>	May 10, 2005	100 Hours in Vegas Package
261.	<i>Primedia Insight</i>	May 10, 2005	... fixed wireless broadband service in the Vegas market.
262.	<i>University Wire</i>	May 10, 2005	I'll be in Vegas next week ...
263.	<i>The Washington Post</i>	May 10, 2005	... as a Joan Rivers impersonator in Vegas since 1985.
264.	<i>The Western Mail</i>	May 10, 2005	Here they are again, this time kissing in Vegas.
265.	<i>zaptait</i>	May 10, 2005	As I've always said, don't take me to Vegas.
266.	<i>adweek.com</i>	May 9, 2005	... What happens in Vegas, stays in Vegas.
267.	<i>Akron Beacon Journal</i>	May 9, 2005	This place has a Vegas feel to it; ...
268.	<i>The Associated Press</i>	May 9, 2005	It's mor laid-back here than in Vegas, ...
269.	<i>Belleville News-Democrat</i>	May 9, 2005	Back in Vegas, she even went back to work ...
270.	<i>Birmingham Post</i>	May 9, 2005	Selfridges is having a Vegas Supernova three weeks ...
271.	<i>Network World</i>	May 9, 2005	To say they're bullish might be the safest bet in Vegas.
272.	<i>The Daily Oklahoman</i>	May 9, 2005	... Vegas is so cutthroat ...
273.	<i>Daily Deal/The Deal</i>	May 9, 2005	But for all of Macau's potential to rival Vegas ...
274.	<i>Daily News Record</i>	May 9, 2005	... influx of international clientele and the booming Vegas economy as motivations ...
275.	<i>Daily News Record</i>	May 9, 2005	... or The Exclusive in Vegas and it's obvious that while U.S. companies shine in upper-moderate to better men's wear ...
276.	<i>Daily Variety</i>	May 9, 2005	... shields the casino from the rest of Vegas.
277.	<i>eWeek</i>	May 9, 2005	... the fun he could have with such an easily concealed videocam in Vegas ...
278.	<i>Forbes</i>	May 9, 2005	... a compulsive gambler waylaid en route to Vegas.
279.	<i>Furniture Today</i>	May 9, 2005	Bedding majors flock to Vegas
280.	<i>Furniture Today</i>	May 9, 2005	... World Market Center in Vegas.
281.	<i>The Hotline</i>	May 9, 2005	What happens in Vegas ...
282.	<i>The Hotline</i>	May 9, 2005	... The Asylum, DC Thornton, Michelle Malkin, A kiwi in Vegas, Keeler Political Report, ...
283.	<i>InfoWorld</i>	May 9, 2005	What happens in Vegas stays in Vegas ...

	Publication	Date	Use
284.	<i>Las Vegas Review-Journal</i>	May 9, 2005	Especially here in Vegas, we're going away from glass-topped tables to stone...
285.	<i>Las Vegas Review-Journal</i>	May 9, 2005	... environment and conservation issues during its Vegas visit.
286.	<i>Los Angeles Times</i>	May 9, 2005	... is crammed with trucks and commuters, not Vegas-bound tourists.
287.	<i>Los Angeles Times</i>	May 9, 2005	... what happens in Vegas stays in Vegas.
288.	<i>Maclean's</i>	May 9, 2005	... was married for a few hours in Vegas before later marrying a backup dancer.
289.	<i>Maclean's</i>	May 9, 2005	I came back from a week in Vegas ...
290.	<i>Milwaukee Journal Sentinel</i>	May 9, 2005	It stands to reason, though that the Killers formed in Vegas ...
291.	<i>National Law Review</i>	May 9, 2005	... what happens in Vegas winds up at the Trademark Office.
292.	<i>Omaha World-Herald</i>	May 9, 2005	... the biggest story of the weekend in Vegas.
293.	<i>People</i>	May 9, 2005	At a recent Vegas convention, the stood far apart, ...
294.	<i>PR Week</i>	May 9, 2005	As Vegas enjoys a continuing economic boom ...
295.	<i>PR Newswire US</i>	May 9, 2005	But Vegas is not just for grown-ups.
296.	<i>PR Newswire US</i>	May 9, 2005	... some of the great insights that these Vegas zealots impart.
297.	<i>The Sports Network</i>	May 9, 2005	All in all, it was a great Derby for Vegas race books.
298.	<i>Sports Illustrated</i>	May 9, 2005	... I went into a little tattoo joint in Vegas run by a guy ...
299.	<i>Star Tribune</i>	May 9, 2005	When you do a show about Vegas, you can do it about almost anything ...
300.	<i>Telegraph Herald</i>	May 9, 2005	It can be short: " Went to Vegas. Will call."
301.	<i>Time Magazine</i>	May 9, 2005	... exudes an anti-Vegas, almost Buddhist quietude.
302.	<i>The Times London</i>	May 9, 2005	Romance is an odd commodity for a town like Vegas ...
303.	<i>CNN.com</i>	May 9, 2005	... during "a crazy weekend in Vegas: and shooting on location is ...
304.	<i>Sunday News</i>	May 8, 2005	... Bowl your way to Vegas, Have a Ball ...
305.	<i>GOOD MORNING AMERICA TV Show - ABC</i>	May 8, 2005 8:00 am ET	... And so they got together in Vegas and we'll show you ...
306.	<i>Akron Beacon Journal</i>	May 8, 2005	... and enjoyed the Vegas atmosphere, especially BINGO.

	Publication	Date	Use
307.	<i>The Atlanta Journal-Constitution</i>	May 8, 2005	Back in Vegas, she even went back to work ...
308.	<i>Biloxi Sun Herald</i>	May 8, 2005	... are as common as cabs in places like Vegas, ...
309.	<i>Biloxi Sun Herald</i>	May 8, 2005	... call off the nuptials rather than hop a bus to Vegas, ...
310.	<i>The Boston Herald</i>	May 8, 2005	... to compete live on MTV's "TRL" in Vegas.
311.	<i>The Boston Herald</i>	May 8, 2005	... I'm going to go out to Vegas and Marcus is going to come out to Vegas ...
312.	<i>Chicago Tribune</i>	May 8, 2005	... the latest example of a Vegas gone vogue.
313.	<i>The Clarion-Ledger</i>	May 8, 2005	... when Sammy Davis Jr. could perform in Vegas ...
314.	<i>The Commercial Appeal</i>	May 8, 2005	If I'm in his shoes and Vegas calls and says ...
315.	<i>Daily Star</i>	May 8, 2005	... Mike will help Vegas celebrate its 100th anniversary...
316.	<i>Daily Star</i>	May 8, 2005	The injured were taken to a Vegas hospital ...
317.	<i>The Dallas Morning News</i>	May 8, 2005	... if the groom had run to Vegas instead of the bride.
318.	<i>The Denver Post</i>	May 8, 2005	... in the cool lighting that reminds me of Vegas ...
319.	<i>Herald News</i>	May 8, 2005	... rather than hop a bus to Vegas ...
320.	<i>The Honolulu Advertiser</i>	May 8, 2005	The Vegas Family Vacation offers a resort ...
321.	<i>Las Vegas Review-Journal</i>	May 8, 2005	... has always been part of the Vegas visitors' menu...
322.	<i>The Leaf-Chronicle</i>	May 8, 2005	... to live on as the names of Vegas hotels ...
323.	<i>The Miami Herald</i>	May 8, 2005	Lady Luck's May of Vegas
324.	<i>The Miami Herald</i>	May 8, 2005	With Vegas-style Class III gambling ...
325.	<i>Monterey County Herald</i>	May 8, 2005	... passed the time on a chartered plane to Vegas ...

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	Publication	Date	Use
326.	<i>News & Record</i>	May 8, 2005	... hopped on a bus to Vegas and then Albuquerque
327.	<i>The Observer</i>	May 8, 2005	... that no self-respecting Vegas casino would be seen dead with one.

	Publication	Date	Use
328.	<i>The Observer</i>	May 8, 2005	... of a month of Vegas-themed celebrations...
329.	<i>Palm Beach Post</i>	May 8, 2005	... Boyd keeps the Vegas time-share ...
330.	<i>Palm Beach Post</i>	May 8, 2005	The Marlins have several Vegas connections.
331.	<i>Palm Beach Post</i>	May 8, 2005	... glide from Georgia to Vegas and beyond?
332.	<i>The People</i>	May 8, 2005	... should be topping the bill in Vegas ...
333.	<i>Philadelphia Inquirer</i>	May 8, 2005	Puerto Morelos is Vegas compared to Akumal.
334.	<i>Pittsburgh Post-Gazette</i>	May 8, 2005	... the cash register lit up like the Vegas Strip.
335.	<i>Roanoke Times & World News</i>	May 8, 2005	... To prepare for the Vegas venture ...
336.	<i>Saint Paul Pioneer Press</i>	May 8, 2005	... are as common as cabs in places like Vegas ...
337.	<i>San Bernardino Sun</i>	May 8, 2005	... at the Baker to Vegas race ...
338.	<i>The San Francisco Chronicle</i>	May 8, 2005	... the start of our weekend in Vegas
339.	<i>The San Francisco Chronicle</i>	May 8, 2005	In Vegas these days, women touch.
340.	<i>The San Francisco Chronicle</i>	May 8, 2005	... what happens in Vegas might well go home with me.
341.	<i>The San Francisco Chronicle</i>	May 8, 2005	What didn't stay in Vegas was me.
342.	<i>The San Francisco Chronicle</i>	May 8, 2005	... Vegas, Anyone?
343.	<i>The San Francisco Chronicle</i>	May 8, 2005	... but the culture of Vegas is amorphous.
344.	<i>The Santa Fe New Mexican</i>	May 8, 2005	... and shops and does Vegas, too.
345.	<i>St. Louis Post-Dispatch</i>	May 8, 2005	... we are like gamblers in Vegas.
346.	<i>St. Petersburg Times</i>	May 8, 2005	Back in Vegas ...
347.	<i>St. Petersburg Times</i>	May 8, 2005	... Joe Torre has a one-way ticket to Vegas yet?
348.	<i>The State</i>	May 8, 2005	... CSI franchise - the one set in Vegas ...
349.	<i>Sun-Sentinel</i>	May 8, 2005	... a threat to wreak havoc at Vegas casinos ...
350.	<i>The Sunday People</i>	May 8, 2005	... should be topping the bill in Vegas ...
351.	<i>Sunday Tribune</i>	May 8, 2005	... the most expensive casino that Vegas or anywhere else has seen.
352.	<i>The Sunday Herald</i>	May 8, 2005	... the great British boxing dream in Vegas ...
353.	<i>Ventura County Star</i>	May 8, 2005	... dabbles in the bloated Vegas version so memorable to people ...
354.	<i>Ventura County Star</i>	May 8, 2005	... and glide from Georgia to Vegas and beyond?
355.	<i>Intelligencer Journal</i>	May 7, 2005	By the time Texter left Lancaster for Vegas ...

	Publication	Date	Use
356.	<i>The Associated Press</i>	May 7, 2005	If I'm in his shoes and Vegas calls ...
357.	<i>The Atlanta Journal-Constitution</i>	May 7, 2005	What happens in Vegas stays in Vegas
358.	<i>Birmingham Evening Mail</i>	May 7, 2005	... Vegas is trying to put forward other reasons to enjoy 'Sin City'.
359.	<i>Birmingham Evening Mail</i>	May 7, 2005	It's only a 40-minute flight away from Vegas ...
360.	<i>Buffalo News</i>	May 7, 2005	... he might win a free trip to Vegas ...
361.	<i>Charleston Gazette</i>	May 7, 2005	Will Marlins move to Vegas?
362.	<i>Chicago Daily Herald</i>	May 7, 2005	We've been to Vegas and Portland ...
363.	<i>Contra Costa Times</i>	May 7, 2005	... makes me feel like I'm in Vegas ...
364.	<i>Cox News Service</i>	May 7, 2005	Back in Vegas ...
365.	<i>The Daily Journal</i>	May 7, 2005	... while she was in Vegas.
366.	<i>Daily Record</i>	May 7, 2005	... she didn't run off to Vegas to marry him.
367.	<i>Daily Record</i>	May 7, 2005	... and heard good things about Vegas at the Renfrew Ferry.
368.	<i>The Daily Telegraph</i> London	May 7, 2005	... threatens to stop Vegas's long-term expansion
369.	<i>Daily Record</i>	May 7, 2005	... she didn't run off to Vegas to marry him...
370.	<i>The Express</i>	May 7, 2005	Think Hollywood, not Vegas
371.	<i>Fort Collins Coloradoan</i>	May 7, 2005	The Equine Center will be transformed into a Vegas hotel lobby.
372.	<i>Las Vegas Review-Journal</i>	May 7, 2005	There are very few viable markets, and Vegas is the strongest ...
373.	<i>Las Vegas Review-Journal</i>	May 7, 2005	...(the) first airplane that landed in Vegas had a paying passenger ...
374.	<i>The Mirror</i>	May 7, 2005	... 100 vintage aircraft flying over the Vegas strip ...
375.	<i>The Mirror</i>	May 7, 2005	... when everyone else has gone to Vegas.
376.	<i>The Oregonian</i>	May 7, 2005	... just price the tickets to Vegas instead.
377.	<i>Plain Dealer</i>	May 7, 2005	And after she jetted to Vegas with the singer ...
378.	<i>Sacramento Bee</i>	May 7, 2005	... it makes me feel like I'm in Vegas ...
379.	<i>The Sun</i>	May 7, 2005	... then flew her to Vegas and back on his private jet.
380.	<i>The Sun</i>	May 7, 2005	... fell asleep on the blanket - and dreamt of Vegas.
381.	<i>Associated Press Online</i>	May 7, 2005	If I'm in his shoes and Vegas calls ...
382.	<i>Albuquerque Journal</i>	May 6, 2005	Rams wrestlers compete in Vegas
383.	<i>Anchorage Daily News</i>	May 6, 2005	... sort of price gouging from Vegas ATMs

	Publication	Date	Use
384.	Anchorage Daily News	May 6, 2005	... took the money to Vegas to pay off a heroin debt.
385.	The Arizona Republic	May 6, 2005	... because in Vegas, even a suit has to look sexy
386.	The Associated Press	May 6, 2005	If I'm in his shoes and Vegas calls ...
387.	The Boston Herald	May 6, 2005	... Tommy Lee in Vegas, baby, then accompanied Pamela Anderson's ex ...
388.	BPI Entertainment News Wire	May 6, 2005	... Elvis was such a presence in Vegas
389.	Business Day South Africa	May 6, 2005	... keeping a watchful eye on the Vegas market
390.	Chicago Tribune	May 6, 2005	... pageant pals are kidnapped in Vegas ...
391.	Chicago Sun-Times	May 6, 2005	... catch a bus to Vegas, go on to Albuquerque ...
392.	AMERICAN MORNING TV Show - CNN	May 6, 2005 7:00 am EST	... a museum with weird stuff in Vegas ...
393.	Contra Costa Times	May 6, 2005	... makes me feel like I'm in Vegas ...
394.	Cox News Service	May 6, 2005	... glide from Georgia to Vegas and beyond ...
395.	Daily News	May 6, 2005	... entourage on his private plane to Vegas.
396.	The Dallas Morning News	May 6, 2005	... and move a date to Vegas.
397.	Birmingham Post and Mail Ltd Evening Mail	May 6, 2005	... is staging a Vegas Supernova promotion until May 15.
398.	Fort Worth Star Telegram	May 6, 2005	... was spotted in Vegas by always-trim Jessica Alba ...
399.	The Hollywood Reporter	May 6, 2005	... Elvis was such a presence in Vegas
400.	The Hotline	May 6, 2005	What happens in Vegas only happens in Vegas
401.	The Miami Herald	May 6, 2005	Beyond that, the wooers from Vegas ...
402.	COUNTDOWN TV Show - MSNBC	May 6, 2005 8:00 pm EST	... and hop on a bus to Vegas ...
403.	THE ABRAMS REPORT TV Shoe - MSNBC	May 6, 2005 6:00 pm EST	... writes about the fact that she went to Vegas.
404.	DAY TO DAY Radio Show - NPR	May 6, 2005 4:00 am EST	... 49 percent of all the rooms on the Vegas Strip.
405.	The New York Times	May 6, 2005	Forced to dress like a Vegas cocktail waitress ...
406.	The News-Press	May 6, 2005...	Vegas lounge lizards
407.	Newsday	May 6, 2005	... as a campy Vegas variety show ...
408.	Orlando Sentinel	May 6, 2005	... who come there to Osceola's version of the Vegas Strip ...
409.	Philadelphia Inquirer	May 6, 2005	... was spotted in Vegas by ...

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410.	<i>Philadelphia Inquirer</i>	May 6, 2005	... doesn't consider it a road trip if Vegas isn't a stop
411.	<i>Philadelphia Inquirer</i>	May 6, 2005	Forget Vegas; this time the hip Ocean cats heads to Europe ...
412.	<i>Reno Gazette-Journal</i>	May 6, 2005	Can Vegas support an MLB team?
413.	<i>Reno Gazette-Journal</i>	May 6, 2005	... a new singer before shows in Vegas and Texas this summer.
414.	<i>Rochester Democrat and Chronicle</i>	May 6, 2005	Everyone know the story about whatever happens in Vegas.
415.	<i>Salon.com</i>	May 6, 2005	... a quick trip to Vegas would do the trick ...
416.	<i>The San Diego Union-Tribune</i>	May 6, 2005	... either by the Vegas gamblers grabbing for his ...
417.	<i>San Jose Mercury News</i>	May 6, 2005	I feel like I'm in Vegas ...
418.	<i>The Sporting News</i>	May 6, 2005	Take it to Vegas ...
419.	<i>Springfield News-Leader</i>	May 6, 2005	... a landmark of the old Vegas strip ...
420.	<i>St. Petersburg Times</i>	May 6, 2005	Maybe Vegas can't handle a major-league franchise.
421.	<i>St. Petersburg Times</i>	May 6, 2005	... at least 11 trips to Vegas since 1990..
422.	<i>The State</i>	May 6, 2005	Bullet train to Vegas ...
423.	<i>WWD</i>	May 6, 2005	Response to the latest Vegas store ...
424.	<i>Wyoming Tribune-Eagle</i>	May 6, 2005	In Vegas he worked on murals ...
425.	<i>Austin American-Statesman</i>	May 5, 2005	... but the fear is that Vegas' big airport ...
426.	<i>backstage.com</i>	May 5, 2005	... hopes to tour throughout Vegas with the production.
427.	<i>backstage.com</i>	May 5, 2005	... of local plays winding up Vegas runs this week.
428.	<i>Charleston Daily Mail</i>	May 5, 2005	... But normal is running off to Vegas.
429.	<i>Charlotte Observer</i>	May 5, 2005	... held beliefs about Vegas is that gangster ...
230.	<i>Chicago Sun-Times</i>	May 5, 2005	Will she use its magic to win big in Vegas?
431.	<i>The Commercial Appeal</i>	May 5, 2005	... her impromptu trip to Vegas.
432.	<i>Copley News Service</i>	May 5, 2005	What happens in Vegas goes here
433.	<i>The Courier-Journal</i>	May 5, 2005	... I like Vegas. I like the Eagles ...
434.	<i>Daily News</i>	May 5, 2005	We're going to Vegas in July.
435.	<i>Daily News</i>	May 5, 2005	... were all over each other last weekend in Vegas ...
436.	<i>Daily News</i>	May 5, 2005	... spending too much time in Vegas ...
437.	<i>The Dallas Morning News</i>	May 5, 2005	... why not take a trip to Vegas.
438.	<i>The Dallas Morning News</i>	May 5, 2005	Vegas rule

	Publication	Date	Use
439.	<i>Dallas Observer</i>	May 5, 2005	... a restaurant called Olives [New York, Boston, Aspen, Tokyo, D.C., Vegas] ...
440.	<i>FD Wire</i>	May 5, 2005	... network quite like ours in Vegas ...
441.	<i>THE O'REILLY FACTOR</i> TV Show - Fox	May 5, 2005 8:48 pm EST	... The media made her go to Vegas?
442.	<i>The Hotline</i>	May 5, 2005	What happens in Vegas goes to Lowdown ...
443.	<i>The Independent</i>	May 5, 2005	... Brit doe rather well in Vegas
444.	<i>The Kansas City Star</i>	May 5, 2005	... is a story of an impromptu Vegas wedding ...
445.	<i>Lansing State Journal</i>	May 5, 2005	... travel to Detroit or take trips to Vegas or Miami ...
446.	<i>Las Vegas Review-Journal</i>	May 5, 2005	... what happens in Vegas stretches all the way into White Pine County ...
447.	<i>Las Vegas Review-Journal</i>	May 5, 2005	... hopes to be part of a Vegas-based TV show ...
448.	<i>Legal Week</i>	May 5, 2005	... of the overall scale of the Vegas-style casinos ...
449.	<i>Los Angeles Times</i>	May 5, 2005	3-day bash in Vegas
450.	<i>The Miami Herald</i>	May 5, 2005	... I'd ever take them with me to Vegas.
451.	<i>THE MONTEL WILLIAMS SHOW</i> TV Show - SYND	May 5, 2005 5:00 am EST	... Yeah, it's about that Vegas thing.
452.	<i>SCARBOROUGH COUNTRY</i> TV Show - MSNBC	May 5, 2005 10:00 pm EST	... what happened in Vegas would stay in Vegas.
453.	<i>The Myrtle Beach Sun-News</i>	May 5, 2005	Thursday Vegas Getaway ...
454.	<i>The New York Times</i>	May 5, 2005	Most defenders in Vegas encouraged.
455.	<i>The New York Post</i>	May 5, 2005	... the new Vegas branch of Hogs & Heifers man land ...
456.	<i>The News & Observer</i>	May 5, 2005	... horse and dog tracks with Vegas-style slot machines ...
457.	<i>The Orange County Register</i>	May 5, 2005	He came home from Vegas a winner
478.	<i>Pittsburgh Post-Gazette</i>	May 5, 2005	... I don't know what the odds were in Vegas, but ...
459.	<i>Plain Dealer</i>	May 5, 2005	... part of a series on "Breaking Vegas."
450.	<i>The Providence Journal</i>	May 5, 2005	It comes out that you stopped in Vegas ...
461.	<i>Rochester Democrat and Chronicle</i>	May 5, 2005	... a Cirque du Soleil performance in Vegas.
462.	<i>Scripps Howard News Service</i>	May 5, 2005	It comes out that you stopped in Vegas ...
463.	<i>The Sports Network</i>	May 5, 2005	... at the Plaza in downtown Vegas ...

	Publication	Date	Use
464.	<i>Star News</i>	May 5, 2005	... on a conference call while we were in Vegas ...
465.	<i>Time-Picayune</i>	May 5, 2005	... and hop a bus to Vegas?
466.	<i>Tulsa World</i>	May 5, 2005	... which became the Aladdin Hotel on the Vegas Strip.
467.	<i>University Wire</i>	May 5, 2005	Most of her time in Vegas was spent hanging around the Greyhound station.
468.	<i>The Associated Press State & Local Wire</i>	May 4, 2005	... a trip to Vegas isn't complete without seeing the Hoover Dam ...
469.	<i>The Atlanta-Journal-Constitution</i>	May 4, 2005	... bus fare for two to Vegas and Albuquerque.
470.	<i>The Australian</i>	May 4, 2005	She spent some time in Vegas, ...
471.	<i>The Baltimore Sun</i>	May 4, 2005	Honeymoon in Vegas:
472.	<i>Charlotte Observer</i>	May 4, 2005	... took a Greyhound to Vegas and ended up on a pay phone ...
473.	<i>Cleveland Scene</i>	May 4, 2005	The glammy big beat of Vegas and Tweekend ...
474.	SHOWBIZ TONIGHT TV Show - CNN	May 4, 2005 7:00 pm EST	She ended up in Vegas anyway, right?
475.	<i>Cox News Service</i>	May 4, 2005	... the Vegas market is akin to an evil empire ...
476.	<i>Daily News</i>	May 4, 2005	Two days before, Vegas spies had claimed ...
477.	THE O'REILLY FACTOR TV Show - FOX	May 4, 2005 8:55 pm EST	In a Vegas casino, no problem.
478.	<i>Comtex News Network</i>	May 4, 2005	... are arranged to coincide with the NAB show in Vegas.
479.	<i>The Miami Herald</i>	May 4, 2005	Vegas needs a stadium ...
480.	<i>The News & Observer</i>	May 4, 2005	... world championship camp with his performance in Vegas.
481.	<i>News & Record</i>	May 4, 2005	... high tailed it to Vegas and concocted that despicable story ...
482.	<i>Philadelphia Daily News</i>	May 4, 2005	... Sunday-school teacher was reported by sources in Vegas as having blown her money ...
483.	<i>Philadelphia Inquirer</i>	May 4, 2005	... Greyhound bus in Georgia bound for Vegas.
484.	<i>Pittsburgh Post-Gazette</i>	May 4, 2005	Impressionists in Vegas
485.	<i>The San Francisco Chronicle</i>	May 4, 2005	... faux kidnapping and solo honeymoon in Vegas cost taxpayers ...
486.	<i>Scripps Howard News Service</i>	May 4, 2005	I won in Vegas putting a different way.
487.	<i>The Seattle Post-Intelligencer</i>	May 4, 2005	Do shop in on your next Vegas trip.

	Publication	Date	Use
488.	<i>The Sports Network</i>	May 4, 2005	... which as a post time of 2:45 p.m. in Vegas ...
489.	<i>Star Tribune</i>	May 4, 2005	She's asked what would be best for going to Vegas ...
490.	<i>Sun-Sentinel</i>	May 4, 2005	... says White Sox outfielder Aaron Rowand, another Vegas product.
491.	<i>UPI</i>	May 4, 2005	British 'poker tourist' wins big in Vegas
492.	<i>Winston-Salem Journal</i>	May 4, 2005	I won in Vegas putting a different way.
493.	<i>The Associated Press</i>	May 3, 2005	And yes, you can get married in Vegas ...
494.	<i>Business Wire</i>	May 3, 2005	... the BV Vineyard to Vegas tour ...
495.	<i>CNN DAYBREAK TV Show - CNN</i>	May 3, 2005 5:00 am EST	Atlanta to Vegas, but ticket, 162 bucks.
496.	<i>Daily News</i>	May 3, 2005	... on a chartered plane to Vegas ...
497.	<i>The Dallas Morning News</i>	May 3, 2005	... such as hopping a bus to Vegas ...
498.	<i>Dayton Daily News</i>	May 3, 2005	... who didn't know Dayton-Vegas is a domestic flight.
499.	<i>Eureka Times-Standard</i>	May 3, 2005	... played professionally in my 20s and 30s in Vegas.
500.	<i>FD Wire</i>	May 3, 2005	... and we anticipate unparalleled results leaving Vegas.

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	Publication	Date	Use
501.	<i>Greenwire</i>	May 3, 2005	...Development deal on Vegas' 61 acres ...
502.	<i>Los Angeles Times</i>	May 3, 2005	Built by Vegas impresario Steve Wynn...
503.	<i>Marin Independent Journal</i>	May 3, 2005	... She spent some time in Vegas ...
504.	<i>Market Wire</i>	May 3, 2005	... its Vegas-style applications are sweeping the nation.
505.	<i>The Miami Herald</i>	May 3, 2005	... She spent some time in Vegas...
506.	<i>Milwaukee Journal Sentinel</i>	May 3, 2005	... What happens in Vegas stays in Vegas ...
507.	<i>Milwaukee Journal Sentinel</i>	May 3, 2005	Even the Vegas stuff I thought was really cool.
508.	<i>Modesto Bee</i>	May 3, 2005	Certainly, those in Vegas would say the odds ...
509.	<i>The Montgomery Advertiser</i>	May 3, 2005	Maybe I should have headed to Vegas before Talladega.

	Publication	Date	Use
510.	<i>The New York Post</i>	May 3, 2005	Already in Vegas for the opening of Steve Wynn's hotel ...
511.	<i>The New York Post</i>	May 3, 2005	He'd been playing Vegas back in 1982 ...
512.	<i>The Orange County Register</i>	May 3, 2005	... at a theater in Vegas ...
513.	<i>Orlando Sentinel</i>	May 3, 2005	... cut my hair and take a bus to Vegas in order to find myself.
514.	<i>Philadelphia Daily News</i>	May 3, 2005	... she could afford a trip to Vegas ...
515.	<i>Pittsburgh Post-Gazette</i>	May 3, 2005	... call of the nuptials rather than hop a bus to Vegas ...
516.	<i>PR Newswire</i>	May 3, 2005	These new shows include MAN VS. VEGAS, ...
517.	<i>Sacramento Bee</i>	May 3, 2005	... Certainly, those in Vegas would say the odds are heavily slanted ...
518.	<i>Scripps Howard News Service</i>	May 3, 2005	... call off the nuptials rather than hop a bus to Vegas ...
519.	<i>St. John's Telegram Newfoundland</i>	May 3, 2005	... is often busier than the slots at a Vegas casino.
520.	<i>St. Louis Post-Dispatch</i>	May 3, 2005	See you in Vegas
521.	<i>The Sun</i>	May 3, 2005	While the boys are off on a post-season trip to Vegas ...
522.	<i>Tulsa World</i>	May 3, 2005	She chopped off her hair and took a bus to Vegas ...
523.	<i>The Virginian-Pilot</i>	May 3, 2005	... ended up on a Greyhound bus bound for Vegas.
524.	<i>The Washington Post</i>	May 3, 2005	... At least I didn't hop a bus to Vegas The Wichita Eagle
525.	<i>May 3, 2005</i>	May 3, 2005	Ruffin plans to roll dice in Vegas
526.	<i>Wisconsin State Journal</i>	May 3, 2005	... her trips to Laughlin and Vegas with her husband.
527.	<i>WWD</i>	May 3, 2005	Vegas has been a strong market for us ...
528.	<i>Aberdeen Evening Express</i>	May 3, 2005	... for the bright lights of Vegas.
529.	<i>Amusement Business</i>	May 2, 2005	It's the show's third year in Vegas.
530.	<i>Amusement Business</i>	May 2, 2005	... moved to Mandalay Bay two years ago to embrace the Vegas glitz ...
531.	<i>The Associated Press</i>	May 2, 2005	... who knew Vegas had a Hofbrauhaus?
532.	<i>The Associated Press</i>	May 2, 2005	Impressionists going to Vegas
533.	<i>The Associated Press</i>	May 2, 2005	She spent some time in Vegas ...
534.	<i>Business Wire</i>	May 2, 2005	... the Vegas native landed a spin in Black Enterprise Magazine's ...
535.	<i>Business Wire</i>	May 2, 2005	... higher-than-expected traffic to the Vegas listings ...
536.	<i>Canberra Times</i>	May 2, 2005	Why do tourists continue to flock to Vegas ...
537.	<i>Chicago Sun-Times</i>	May 2, 2005	Knowing Jordan's love of Vegas ...

	Publication	Date	Use
538.	PAULA ZAHN NOW TV Show - CNN	May 2, 2005 8:00 pm EST	... and a bus ride to Vegas into unwanted fame.
539.	NANCY GRACE TV Show - CNN	May 2, 2005 8:00 pm EST	...several hours going from Dallas, Texas, to Vegas, maybe get her head screwed on straight.
540.	SHOWBIZ TONIGHT TV Show - CNN	May 2, 2005 7:00 pm EST	Take him to Vegas and elope, bring the guy with you.
541.	LIVE FROM ... TV Show - CNN	May 2, 2005 1:00 pm EST	... had taken off to Las Vegas and then Albuquerque by bus.
542.	Crain's Chicago Business	May 2, 2005	We also spent time in Naples (Fla.) and Vegas.
543.	Credit Union Journal	May 2, 2005	Most Vegas casinos have oxygen bars now.
544.	Daily News	May 2, 2005	Dave Foley, who's in Vegas a lot anyway ...
545.	The Daily News of Los Angeles	May 2, 2005	So long Cher - see you in Vegas.
546.	Daily News Record	May 2, 2005	What happens in Vegas, stays in Vegas.
547.	The Dallas Morning News	May 2, 2005	... someone invites you on a trip to Vegas.
548.	Fort Worth Star-Telegram	May 2, 2005	... some of the most thrilling coasters in Vegas ...
549.	FOX ON THE RECORD WITH GRETA VAN SUSTEREN TV Show - FOX	May 2, 2005 10:00 pm EST	... when she arrived in Vegas and how long she stayed?
550.	FOX HANNITY & CO TV Show - FOX	May 2, 2005 9:00 pm EST	... she ran off to Vegas.
551.	THE BIG STORY WITH JOHN GIBSON TV Show - FOX	May 2, 2005 5:57 pm EST	...were bopping around Vegas while Greg Kelly ...
552.	Las Vegas Review-Journal	May 2, 2005	... and Vegas wedding chapels ... And 'Vegas Baby,' which filmed here in January ...
553.	SCARBOROUGH COUNTRY TV Show - MSNBC	May 2, 2005 10:00 pm EST	like leaving your 16 bridesmaids waiting for you to come back from Vegas.
554.	The New York Post	May 2, 2005	... Kilmer berates Broadway for becoming too "Vegas-like."
555.	New York Observer	May 2, 2005	The big-band sound of Vegas in the good old days ...
556.	People	May 2, 2005	When Paris Hilton strutted down a Vegas runway ...
557.	The Post and Courier	May 2, 2005	Last year, Vegas developer and consino mogul Steve Wynn ...
558.	Publishers Weekly	May 2, 2005	... and his crew pulled off a string of Vegas Heists ...

	Publication	Date	Use
559.	<i>Publishers Weekly</i>	May 2, 2005	... a lot of booze-fueled benders to Vegas and Atlantic City ...
560.	<i>The Sports Network</i>	May 2, 2005	... was coming out to Vegas that next weekend ...
561.	<i>The Sun</i>	May 2, 2005	...a game of cards and a bet so Vegas seemed like the obvious destination.
562.	<i>Television Week</i>	May 2, 2005	... Nielsen Entertainment research facility in Vegas' Fashion Show Mass
563.	<i>Virginian-Pilot</i>	May 2, 2005	It was like going to Vegas and putting everything I own on black.
564.	<i>WWD</i>	May 2, 2005	... piecing together several Vegas-bound accoutrements.
565.	<i>Sunday News</i>	May 1, 2005	... Bowl your way to Vegas,
566.	<i>GOOD MORNING AMERICA</i> TV Show - ABC	May 1, 2005 7:00 am ET	... and gets on a bus to Vegas ...
567.	<i>Architectural Record</i>	May 1, 2005	... upping the ante in Vegas for years now.
568.	<i>Baby Talk</i>	May, 2005	... forget about taking an impulsive trip to Vegas.
569.	<i>Bismarck Tribune</i>	May 1, 2005	The number of passengers flying to Vegas from Bismarck has nearly tripled.
570.	<i>Birmingham News</i>	May 1, 2005	... like autumn leaves to neon blues fit for Vegas after dark.
571.	<i>The Boston Herald</i>	May 1, 2005	... odds of this relationship surviving kidnapped-to-Vegas.
572.	<i>The Boston Herald</i>	May 1, 2005	On at least one assignment to Vegas ...
573.	<i>Chicago Sun-Times</i>	May 1, 2005	... he lost a lot of clout with all that heat going on in Vegas ...
574.	<i>Columbia Journalism Review</i>	May 2005 / June 2005	... Meanwhile - let's go with Vegas or Palm Beach or Both ...
575.	<i>The Commercial Appeal</i>	May 1, 2005	I don't like taking my money to Tunica and Vegas.
576.	<i>Consulting-Specifying Engineer</i>	May 1, 2005	But it's not just Vegas.
577.	<i>Consulting-Specifying Engineer</i>	May 1, 2005	... no description of a Vegas fire-protection scheme ...
578.	<i>The Dallas Morning News</i>	May 1, 2005	... someone invites you on a trip to Vegas.
579.	<i>The Desert Sun</i>	May 1, 2005	... find as much good sin here as in Vegas.
580.	<i>Detroit Free Press</i>	May 1, 2005	... there are plenty of curious tales about Vegas that sound like urban legends...
581.	<i>FSB</i>	May 1, 2005	And what about Vegas?
582.	<i>The Herald-Dispatch</i>	May 1, 2005	... Elvis' gospel and Vegas years.

	Publication	Date	Use
583.	<i>Home News Tribune</i>	May 1, 2005	In episode 10, Vegas showgirl Janu Tornell was burnt out ...
584.	<i>In Style</i>	May, 2005	It was like Vegas, baby ...
585.	<i>Incentive</i>	May 1, 2005	This month, Vegas is throwing itself a birthday bash...
586.	<i>Kiplinger's Retirement Report</i>	May, 2005	... as good as anything you're going to see in Vegas, ...
587.	<i>Kitchen & Bath Business</i>	May 1, 2005	These prizes sill be presented at AWFS Vegas, ...
588.	<i>Law Vegas Review-Journal</i>	May 1, 2005	Vegas is not a pro sports city.
589.	<i>Leisure Report</i>	May 2005	...to raise the bar and not gamble with our time in Vegas.
590.	<i>Lewiston Morning Tribune</i>	May 1, 2005	... earned about \$800 on his trip to Vegas.
591.	<i>Lincoln Journal Star</i>	May 1,2005	... with an aerial view of rooftops, a parking garage and asphalt in "Untitled (Vegas)"
592.	<i>Macworld</i>	May 1, 2005	... perfect for "business" trips to Vegas.
593.	<i>Meetings & Conventions</i>	May 1, 2005	We do 26,000 meetings a year in Vegas.
594.	<i>Men's Fitness</i>	May 1, 2005	You can never have too much money in Vegas.
595.	<i>Mix</i>	May 1, 2005	... we have played The Joint at the Hard Rock in Vegas.
596.	<i>Money</i>	May, 2005	1962: Moves family to Vegas
597.	<i>Money</i>	May, 2005	... a table in Vegas and a lifetime of lessons about investing.
598.	<i>Muscle & Fitness</i>	May 1, 2003	... unlike the typical ending in Vegas casinos, you keep your change.
599.	<i>The New York Times</i>	May 1, 2005	... she did the show " for a free trip to Vegas" ...
600.	<i>The New York Post</i>	May 1, 2005	Miami to Vegas The CBS "CSI franchise ...
601.	<i>The New York Post</i>	May 1, 2005	... from Vegas he's off to L.A. ...
602.	<i>News & Record</i>	May 1, 2005	... calling it anything having to do with Vegas.
603.	<i>The News of the World</i>	May 1, 2005	... half the price of tickets to a Vegas fight.
604.	<i>The Ottawa Sun</i>	May 1, 2005	Famed Vegas marriage overseer Rev. Charolette Richards says ...
605.	<i>Philadelphia Magazine</i>	May, 2005	... Ameristar Casinos of Vegas, which has facilities in Missouri, Iowa, ...
606.	<i>Philadelphia Inquirer</i>	May 1, 2005	... food and wine, skiing, Vegas casinos, flight and hotel or car and hotel.

	Publication	Date	Use
607.	<i>Pittsburgh Post-Gazette</i>	May 1, 2005	... if there was betting on that figure in Vegas ...
608.	<i>Reno Gazette-Journal</i>	May 1, 2005	But tribes are building casinos, and Vegas has this place beat ...
609.	<i>Restaurant Business</i>	May 1, 2005	... or the showmanship that accompanies dinner in Vegas.
610.	<i>Retail Traffic</i>	May 1, 2005	... plenty of other topics to talk about in Vegas, too.
611.	<i>Retail Traffic</i>	May 1, 2005	Vegas whiz kid and Mirage-builder Steve Wynn ...
612.	<i>Retail Traffic</i>	May 1, 2005	Not one major project was in the works in downtown Vegas a year ago.
613.	<i>Sacramento Bee</i>	May 1, 2005	... I was trying to get him the Vegas job.
614.	<i>Salt Lake Tribune</i>	May 1, 2005	'Hairspray' in Vegas
615.	<i>Scientific Computing & Instrumentation</i>	May 1, 2005	... but Vegas is the nuclear weapon of conference committees looking to boost attendance.
616.	<i>Sound & Video Contractor</i>	May 1, 2005	... communication technologies in action at major, state-of-the-art Vegas facilities.
617.	<i>The Sunday Oregonian</i>	May 1, 2005	What happens in Vegas doesn't always stay in Vegas.
618.	<i>Sunday Express</i>	May 1, 2005	More than 260 backroom staff at the Mirage Hotel in Vegas where the pair performed have already been laid off.
619.	<i>Sunset</i>	May 1, 2005	... 900 feet above the bright light of Vegas
620.	<i>The Washington Times</i>	May 1, 2005	... and talk of Vegas slot machines.
621.	<i>Winston-Salem Journal</i>	May 1, 2005	We've worn out I-20 and I-40 and Vegas and the Grand Canyon, so now we're running 80.
622.	<i>Wireless Week</i>	May 1, 2005	Soon, what happens in Vegas won't necessarily stay in Vegas.
623.	<i>Wood & Wood Products</i>	May 1, 2005	Plan to check out Vegas
624.	<i>Boston Herald</i>	July 14, 2005	It's in the cards; Poker craze in spotlight as World Series explodes in glitzy Vegas
625.	<i>Argus Leader</i> (Sioux Falls, ND)	January 13, 2005	It's a best effort to avoid the type of disappointment Nevada officials felt last October. The U.S. mint prohibited use of gambling images, barring slot machines, playing cards..
626.	<i>USA Today</i>	July 6, 2005	Then there's fabulous Las Vegas, including oversized playing cards and dice

	Publication	Date	Use
627.	<i>Boston Globe</i>	July 14, 2005	For Poker Players, Universal Draw of World Series Lies in Riches Thousands in Vegas Vie for \$7.5 M Prize
628.	<i>Associated Press Wire Report, as published on MSNBC.com</i>	Oct. 2, 2004 at 6:14 pm	Slot machines, playing cards, and even the games Las Vegas skyline won't be on Nevada's quarter
629.	<i>Philadelphia Enquirer</i>	July 5, 2005	In Vegas, they're playing cards
630.	<i>Baltimore Sun</i>	November 2, 2003	A Marylander sells the family business and moves to Vegas to play poker
631.	<i>Chicago Daily Herald</i>	May 27, 2005	Las Vegas playing cards from casinos like the Dunes Hotel
632.	<i>M2 Presswire</i>	June 8, 2005	Gaming Partners International Corporation.. is headquartered in Las Vegas, Nevada
633.	Bon Appétit	Sept., 2005	<p>... Vegas: The Second Wave</p> <p>As for Vegas, well, it isn't really a great restaurant city ...</p> <p>MGM Grand is the ultimate Vegas destination for savvy travelers ...</p> <p>More of what you come to Vegas for.</p> <p>Taste of Vegas</p> <p>Only Vegas™</p> <p>Only in Vegas can you experience ...</p> <p>Picture of a chef wearing an "Only Vegas" coat and flipping playing cards.</p> <p>Only Vegas.</p> <p>Only Vegas™</p> <p>What's Your Vegas Alibi?</p> <p>Picture of Emeril Lagasse wearing "Only Vegas" coat</p>

	Publication	Date	Use
			Picture of Daniel Voulud wearing "Only Vegas" coat and fanning playing cards
			Picture of Tom Moloney wearing "Only Vegas" coat
			Picture of Guy Savoy wearing "Only Vegas" coat and fanning playing cards.
633.	Bon Appétit (cont.)	Sept., 2005	Picture of Jöel Robuchon wearing "Only Vegas" coat and flipping playing cards.
			Picture of Rock Moonen wearing "Only Vegas" coat
			"Taste of Vegas" with a chef's hat design to the right of each chef's name.
			Only Vegas™
			Rick Moonen: ... Things I Love Most About Vegas... Best Vegas Memory:
			Guy Savoy: ... Things I Love Most About Vegas ... Best Vegas Memory: ... Favorite Vegas Gaming Pastime:
			Daniel Boulud: ... Thing I Love Most About Vegas: Being In Vegas Today. ... Best Vegas Memory: In 1981, I Took First Trip To Vegas In An RV - That Is When I Discovered Vegas.
			Jöel Bobuchon: ... Thing I Love Most About Vegas ... Favorite Vegas Gaming Pastime:
			Tom Moloney: ... Thing I Love Most About Vegas ... Biggest Career Gamble: Moving From Florida To Vegas ... Favorite Vegas Gaming Pastime:

	Publication	Date	Use
			Emeril Lagasse: ... Thing I Love Most About Vegas ... Best Vegas Memory: What Happens In Vegas, Stays In Vegas.
			Vegas The Second Wave ...

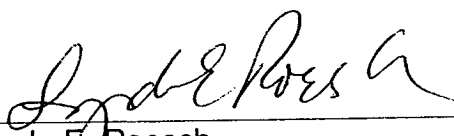
	Publication	Date	Use
634.	<i>The Wall Street Journal</i>	Oct. 22, 2005	It's Our Vegas Sweepstakes!
			travelocity.com/vegas
			It's Our Vegas Sweepstakes!
			Only Vegas™
635.	<i>National Geographic Traveler</i>	Oct. 2001	... In Vegas our buildings are proud ...
			... before Walt opened the gates in Anaheim, he visited Vegas, ...
			... real estate is the tabula rasa on which Vegas immigrants ...
			... But in Vegas one never forgets the desert. ...
		 I doubt our Vegas Popsicle will melt anytime soon. ...
636.	Gale Group, Inc. ASAP/Advanstar Communications, Inc. <i>Travel Agent</i> (available on LEXIS/NEXIS)	March 3, 2003	... In London and Manchester, England, taxicabs were adorned with Vegas symbols, including images of playing cards and dice.
637.	New York Times (available on Westlaw)	Jan. 30, 2004	...CASINO CARDS--Deal from a deck of used playing cards from Las Vegas casinos that frequently replace their cards \$1.25 to \$1.75 a deck, all with casino logos. (866) 663-1445 www.homecasinogames.com ...

Publication		Date	Use
638.	New York Times (available on Westlaw)	March 5, 2005	...Michael Godard Fine Arts, a Las Vegas company that sells whimsical paintings and reproductions, featuring martini glasses, poker chips, playing cards...
639.	New York Times (available on Westlaw)	Feb. 26, 2004	...anyone who has ever played in Las Vegas or even a game of Go Fish has almost certainly played with the company's cards...
640.	Fort Worth Star Telegram (available on Westlaw)	Oct. 3, 2004	Slot machines, playing cards and even the famed Las Vegas skyline won't be on Nevada's quarter, much to the disappointment of state officials.
641.	The Kansas City Star (available on LEXIS/NEXIS)	Nov. 28, 2000	...The largest of the also-ran card makers is Las Vegas-based Paul-Son Gaming Corp...
			...Casinos cannot simply throw used cards away. State regulators typically require permanent destruction or defacing of each card to ensure that none pops out of the sleeve of a card cheat one day...
			...As a result, card recycling is a Las Vegas cottage industry. Baranowski said recyclers competed with one another for boxes of used cards that have been drilled through by the casinos or have had their corners clipped...
			...These entrepreneurs then hand-sort the cards back into complete decks for secondary sales as Las Vegas souvenirs...
642.	Las Vegas Mini Rough Guide by Greg Ward	March, 2000	...His greatest coup was to establish the <i>Horseshoe</i> as the permanent home of the World Series of Poker ...
			Blackjack is the most popular table game in Las Vegas...

Publication	Date	Use
		... Poker is unique among Las Vegas card games in that gamblers play against each other...
		...Several [casinos] have begun to stage poker tournaments along the lines of the wildly successful, World Series of Poker held in April each year at Binion's <i>Horseshoe</i> downtown...
642. Las Vegas Mini Rough Guide by Greg Ward (cont.)	March, 2000	Gamblers General Store... they have...packs of cards from all the casinos for .99¢ Top twelve Las Vegas movies... <i>Honeymoon in Vegas</i> (1993)...
643. Frommers® Las Vegas 2006	2006	Diagram of Blackjack table
		Display of cards in Poker Hands
		A Look Back at Vegas: No Tomorrow
		Best of Vegas After Dark
		Vegas on the Upswing
		Penn & Teller's Top 10 Things One Should Never Do In A Vegas Magic Show
		Recording Vegas
		...gambling is what Vegas is about...
		Almost everyone plays in Vegas...
		Blackjack
		POKER
		...In Las Vegas, poker is just about the biggest thing going

Publication	Date	Use
		... Just about every casino now has a poker room, and it's just a matter of time before the others catch up...
		Card sharks are not a rare species in Vegas...
		PAI GOW POKER
		CARIBBEAN STUD POKER
643. Frommers® Las Vegas 2006 2006 (cont.)		3 CARD POKER
		...at least one table in major Vegas casinos...
		5 Souvenirs ...Bonanza Gift and Souvenir Shop , 2460 Las Vegas Blvd. S... It's the self-proclaimed "World's Largest Gift Shop"...all kinds of playing cards both new and used (casinos have to change decks frequently, so this where used packs go)...
		...the best place in Vegas for your comic-book needs.

Dated: **March 13, 2006**


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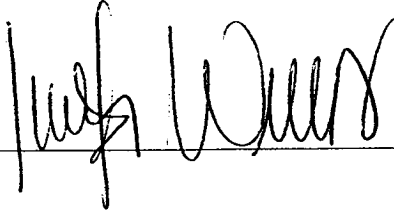
(513) 977-8141-fax

Attorney for Opposer

The United States Playing Card Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by e-mail and U.S. Mail on this 13th day of March, 2006 to Timothy A. Flory, Van Dyke, Gardner, Linn & Burkhart, LLP, 2851 Charlevoix Drive, S.E., P.O. Box 888695, Grand Rapids, MI 49588-8695.

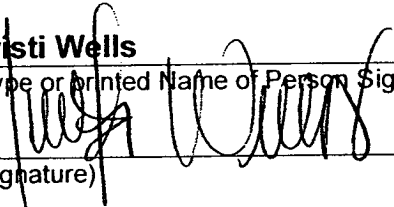


CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on the date shown below.

Kristi Wells

(Type or printed Name of Person Signing Certificate)



(Signature)

March 13, 2006

(Date)

EXHIBIT A

LEXSEE 1998 U.S. DIST. LEXIS 3297

**MID CITY BOWLING LANES & SPORTS PALACE, INC. versus DON CARTER'S ALL
STAR LANES-SUNRISE LTD., GARY R. ALBERADO, and WOLFRAM VIDEO, INC.**

CIVIL ACTION NO. 96-2643 SECTION: E/1

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
LOUISIANA**

1998 U.S. Dist. LEXIS 3297

March 12, 1998, Decided

March 12, 1998, Filed; March 13, 1998, Entered

DISPOSITION: [*1] Motion in limine filed by plaintiff,
Mid City Lanes, DENIED.

COUNSEL: For MID CITY BOWLING LANES &
SPORTS PALACE INC., plaintiff: Cary Joseph Deaton,
Cary J. Deaton, Attorney at Law, Arthur Devereau Dupre,
Jr., Daigle, Sullivan, Dupre & Aldous, Metairie, LA.

For GARY R ALBERADO, DON CARTER'S ALL
STAR LANES - NEW ORLEANS EASTBANK, defend-
ants: Christopher DuPont Matchett, William C. George,
Matchett, Verbois, Futrell & Henchy, Baton Rouge, LA.

For WOLFRAM VIDEO INC, defendant: Larry Gene
Canada, Galloway, Johnson, Tompkins & Burr, New
Orleans, LA.

For WOLFRAM VIDEO INC, defendant: Daniel D.
Reshete, Jr., Law Offices of Daniel D. Reshete, Jr.,
Milwaukee, WI.

JUDGES: MARCEL LIVAUDAIS, JR., Senior United
States District Judge.

OPINIONBY: MARCEL LIVAUDAIS, JR.

OPINION:

ORDER AND REASONS

The plaintiff, Mid City Bowling Lanes & Sports
Palace Inc., ("Mid City Lanes"), has filed a motion in lim-
ine with this Court, to prohibit the defendant, Wolfram
Video, Inc., ("Wolfram"), from: 1) offering expert testi-
mony regarding bowling industry use and recognition of
"Rock 'N' Bowl"; 2) introducing any such expert opinion
based on any measurements any witness had not taken
himself; 3) introducing [*2] into evidence information

contained in "Internet sites," on the basis that it is inadmis-
sible hearsay; and 4) introducing evidence not otherwise
in compliance with *FRE 704*, and *Daubert v. Merrell
Dow Pharmaceuticals*, 509 U.S. 579, 125 L. Ed. 2d 469,
113 S. Ct. 2786 (1993). Defendant, Wolfram, opposes this
motion in limine.

Mid City Lanes moves this Court to prohibit the ad-
mission into evidence of testimony and documentary evi-
dence expected to be offered by defendant. First, Mid City
Lanes argues that Wolfram has failed to name any of its
anticipated witnesses as experts. It further contends that
testimony relating to an entire industry's use and recog-
nition of certain terms. requires some specialized knowl-
edge that can only be proffered by an expert witness.

Defendant Wolfram argues that expert testimony is
not a necessary benchmark for proof in a trademark case.
The absence of consumer surveys does not preclude the
trier of fact from finding a trademark is either generic
or distinctive. *Yamaha Intern. Corp. v. Hoshino Gakki
Co., Ltd.*, 840 F.2d 1572, 1583 (Fed. Cir. 1988). "To prove
distinctiveness under 15 U.S.C. § 1052(f), applicants may
submit any 'appropriate [*3] evidence tending to show
that the mark distinguishes [applicant's] goods.'" *Id.* at
1583. Expert testimony is not required.

While Wolfram admits that it does not intend to offer
expert testimony in this matter, plaintiff nevertheless ob-
jects to any expert testimony on any issue in this case to
the extent it is hearsay. The court in *Soden v. Freightliner
Corp.*, 714 F.2d 498 (5th Cir. 1983) considered a simi-
lar objection to the admission of expert testimony and
observed:

Thus, under Rule 703 n1 an expert can dis-
cuss as the basis for an opinion facts or data
which are otherwise inadmissible hearsay, 'i
f of a type reasonably relied upon by experts

in the particular field in forming opinions or inferences upon the subject.' A trial court's inquiry into whether this standard is satisfied must be made on a case-by-case basis and should focus on the reliability of the opinion and its foundation rather than merely on the fact that it was based, technically speaking, upon hearsay.

Id. at 502-3. Thus, even if defendant were to introduce expert testimony which was based in part on hearsay, the objection is without merit. Insomuch as defendant Wolfram [*4] represents that it does not intend to offer expert testimony, any objection relating to the foundation of such testimony is moot.

n1 *Rule 703 of the Federal Rule of Evidence* provides that "the facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Wolfram further argues that opinion testimony from non-expert witnesses is admissible in certain limited circumstances. This Court recognizes that a lay witness may form and offer opinion testimony in Court. Lay opinion offered must: 1) not require specialized knowledge, 2) be based upon witness' own perception and knowledge of the facts, 3) aid the jury in understanding the witness' testimony, and 4) could be reached by an ordinary person. *Brady v. Chemical Const. Corp.*, 740 [*5] F.2d 195, 201 (2d Cir. 1984) and *Federal Rule of Evidence 701*. The fact that a lay opinion relates to an "ultimate fact" does not

preclude its introduction, but the lay witness must satisfy the criteria that he has personal knowledge of the facts from which he derived an opinion, a rational connection must exist between the opinion expressed and the facts upon which it is based, and the opinion must be helpful in understanding the testimony or in determining a fact in issue. *Soden*, 714 F.2d at 511.

The plaintiff next alleges Wolfram's exhibits that include various Internet web site advertisements should be prohibited due to the lack of testimony regarding the authenticity of the information contained.

The defendant argues that the exhibits of publications on Internet sites are admissible in a trademark case upon laying a proper evidentiary foundation. One of the main issues to be tried in this action, whether a term is entitled to trademark status, is dependent on how the mark is understood and perceived by the purchasing public. Proper evidence of purchaser understanding may derive from the direct testimony of consumers, consumer surveys, trade journals, dictionary [*6] listings, newspapers, and other publications. *Glover v. Ampak, Inc.*, 74 F.3d 57, 59 (4th Cir. 1996), *Magic Wand, Inc. v. RDB, Inc.*, 940 F.2d 638, 641 (Fed. Cir. 1991). Internet listings fall within this category of evidence.

Accordingly, for the above and foregoing reasons,

IT IS ORDERED that the motion in limine filed by plaintiff, Mid City Lanes, be and is hereby **DENIED AT THIS TIME**. Plaintiff may renew any objection at trial to the extent that the evidence which is being offered is not admissible, or the proper foundation was not laid, pursuant to the Federal Rules of Evidence.

New Orleans, Louisiana, March 12, 1998.

MARCEL LIVAUDAIS, JR.

Senior United States District Judge

EXHIBIT B

THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
August 5, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Joseph W. Cotchett

Serial No. 78208591

Paul W. Reidl, Esq. for Joseph W. Cotchett.

S.E. Hickey, Trademark Examining Attorney, Law Office 112
(Janice O'Lear, Managing Attorney).

Before Hohein, Drost and Walsh, Administrative Trademark
Judges.

Opinion by Walsh, Administrative Trademark Judge:

On January 29, 2003, Joseph W. Cotchett (applicant)
filed an intent-to-use application to register HALF MOON
BAY on the Principal Register for "wines."

The examining attorney refused registration on the
ground that the mark is primarily geographically
descriptive of the goods under Section 2(e)(2) of the
Trademark Act, 15 U.S.C. § 1052(e)(2). Applicant

responded; the examining attorney issued a final refusal; and applicant appealed.

The sole issue on appeal is whether HALF MOON BAY is primarily geographically descriptive of wines.

To determine whether HALF MOON BAY is primarily geographically descriptive of wines we must determine: (1) whether the primary significance of the mark is as the name of a place which is generally known; and (2) whether the wine-purchasing public would associate the goods of applicant with the place named, that is, whether the public would believe that the goods come from the place named. In re Societe Generale des Eaux Minerales de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); In re JT Tobacconists, 59 USPQ2d 1080, 1081 (TTAB 2001); In re California Pizza Kitchen Inc., 10 USPQ2d 1704, 1705 (TTAB 1988). The two questions are bound together, that is, there can be no goods-place association if the place named is so obscure or remote that purchasers for the product at issue would not recognize it as a place. Vittel, 3 USPQ2d at 1452.

In a concurring opinion in In re Nantucket, Inc., 677 F.2d 95, 213 USPQ 889, 895 (CCPA 1982), Judge Nies discussed the common law origins of the Trademark Act treatment of geographic terms:

Basic to consideration of the registrability and protectability of geographic terms as a trademark is the routine commercial practice of merchants, whether they are growers, manufacturers, distributors, or local retailers in placing the name of their location on their goods or using the name in their trade name. Because the public would be aware of common trade practice, the common law originally deemed all use of geographic names wholly informational and unprotectible. It was believed such names could not function, and in any event, should not be recognized as the identification of a single source. Thus we must start with the concept that a geographic name of a place of business is a descriptive term when used on the goods of that business. There is a public goods/place association, in effect, presumed.

However, as with other terms which are descriptive when first used, it came to be recognized that through substantially exclusive and extensive use, a merchant might develop a protectible good will in such a geographically descriptive name upon proof that the name ceased being informational to the public and came to indicate a source of goods.

Applicant observes that, in fact, "The wine industry commonly uses geographic place names as trademarks."

Applicant's Brief at 9. And, in particular, applicant indicates further that, ". . . applicant's winery is located in Half Moon Bay, California." Id. at 3.

With the final refusal, the examining attorney provided evidence relevant to both the primary geographic significance of HALF MOON BAY and the association of wines with that place. The relevant evidence comes from the electronic version of the Columbia Gazetteer of North

America (2000) and Merriam-Webster's Geographical Dictionary (3rd ed. 1988).

The Gazetteer includes an entry for Half Moon Bay as follows:

Half Moon Bay, city (1990 pop. 8,886) San Mateo co., W Calif, suburb 23 mi/37 km S of downtown San Francisco, on picturesque Half Moon Bay, of Pacific Ocean, at mouth of Pilarcitos Creek; 37°28'N 122°27'W. sheltered on N by Pillar Point. Artichokes, brussel sprouts; grain; Christmas trees, ornamentals, flowers, nursery prods.; fishing; mfg. (musical instruments, light mfg.). Annual Pumpkin Festival. Half Moon Bay Airport to NW; Santa Cruz Mts. and San Francisco Fish and Game Reserve to NE; part of Half Moon Bay State Beach is to N.

The geographical dictionary includes only one entry for "Half Moon Bay" as follows: "**Half Moon Bay**, City, San Mateo co., W California, on Half Moon Bay (inlet); pop. (1990c) 8886."

The examining attorney's evidence indicates that there is a city named Half Moon Bay located on a bay of the same name about 20 miles south of San Francisco. The city is of significant size with a 1990 population of nearly 9,000. The evidence indicates further that there is agricultural, fishing and manufacturing activity in the city and area known as Half Moon Bay. There is also a local airport called Half Moon Bay Airport.

Applicant adds some additional information by representing that, "The purchasing public, inasmuch as it is familiar with Half Moon Bay, California, recognizes this place as a seaside resort and weekend getaway."

Applicant's Brief at 5. Based on applicant's representation, we conclude that Half Moon Bay, California is also a destination for tourists and vacationers.

When viewed as a whole, the evidence leads to the conclusion that HALF MOON BAY refers to a known geographical location, namely, Half Moon Bay, California, which is neither obscure nor remote. This is also the place where applicant is located.

We also conclude that there is an association between Half Moon Bay, California and wine. In concluding so we first note that, as a general proposition, a goods-place association can be presumed when, as here, the goods of applicant, in fact, come from the place named. In re MCO Properties, Inc., 38 USPQ2d 1154, 1155 (TTAB 1995); In re Cambridge Digital Systems, 1 USPQ2d 1659, 1661 (TTAB 1986); In re Handler Fenton Westerns, Inc., 214 USPQ 848, 849 (TTAB 1982). In this case, we need not rely on that presumption alone because Half Moon Bay, California is a place of significant size where both agricultural and manufacturing activity occurs. Thus, Half Moon Bay,

California is not a place "devoid of commercial activity." In re Cambridge Digital Systems, 1 USPQ2d at 1662. In fact, Half Moon Bay, California is the locus of activities, agricultural and manufacturing, which are entirely compatible with the production of wine. In re Cambridge Digital Systems, 1 USPQ2d at 1662 (Goods-place association found between Cambridge, Massachusetts and computers based on evidence that Cambridge is a "manufacturing and commercial center for electrical machinery and scientific instruments."). And, applicant is, in fact, producing wine in Half Moon Bay, California.

All in all, the evidence points to the conclusion that HALF MOON BAY refers to a known geographical location which is neither obscure nor remote, and an association of that location with wine.

Applicant argues that HALF MOON BAY has a suggestive, nongeographical meaning, and therefore, is not primarily geographically descriptive. Applicant's Brief at 3. However, there is simply no basis to conclude, as applicant urges, that the mark will conjure up in the minds of wine drinkers "the image of enjoying Applicant's product in the moonlight by the water" rather than a place. Id. If we were to adopt applicant's view, we would be compelled to find virtually any place name derived from suggestive

terminology, such as Clearwater or Palm Springs, not primarily geographically descriptive. This argument is merely another way of asserting that a place name is obscure, and therefore, would not be perceived as a place name. Furthermore, there is no evidence here to establish an alternative, overriding meaning which the public would associate with HALF MOON BAY.

This case is also not at all like other cases where the Board has found that a suggestive meaning, growing out a strong association of the place named with an industry or institution, overrides the geographical significance when the mark is applied to certain goods or services. In re International Taste Inc., 53 USPQ2d 1604, 1605 (TTAB 2000); In re Municipal Capital Markets Corp., 51 USPQ2d 1369, 1371 (TTAB 1999); In re Cotter & Co., 228 USPQ 202, 205 (TTAB 1985). Simply put, HALF MOON BAY is not Hollywood, Cooperstown or West Point. We have concluded that, on this record, HALF MOON BAY is neither remote nor obscure and that there is no established, alternative primary meaning for HALF MOON BAY in the public mind.

We also reject the suggestion that the association of the place primarily with tourism somehow negates the primary geographical meaning as applied to wines. In re Nantucket Allserve Inc., 28 USPQ2d 1144, 1145 (TTAB 1993).

Applicant also argues that there are other places known as HALF MOON BAY, and therefore, the mark is not primarily geographically descriptive of Half Moon Bay, California. In both the main brief and reply brief applicant notes the existence of "other" Half Moon Bays in Australia, New Zealand, St. Kitts and Antigua.¹ The only support applicant provides to demonstrate the existence of these places are web addresses. In providing the web addresses applicant apparently presumed that the content of the associated sites would become of record. The examining attorney objected to the form of this evidence. In his reply brief applicant continues to urge acceptance of this "evidence" and argues further that the Board can independently verify applicant's assertions by consulting an atlas. However, applicant neither identifies nor provides pages from any atlas for this purpose.

The identification of web addresses alone is insufficient to make content provided on those web sites of record. The content of web sites changes constantly, in many instances minute by minute. Web addresses also change

¹ In his first office action response applicant referred to additional potential Half Moon Bays, including a bay on a lake in Grand Teton National Park, a swamp in South Carolina and a bay in Jamaica, also without providing any supporting documentation. It is unclear whether applicant intended to maintain these references as part of its argument, but we find these no more persuasive than those applicant cites in its brief.

constantly. Indeed, entire web sites can disappear without notice, and likewise web addresses can be rendered inactive without notice. Consequently, the provision of a mere web address in an attempt to make the content of the associated site of record does not afford any of the certainty or permanence required to establish a record. In re Planalytics Inc., 70 USPQ2d 1453, 1457-58 (TTAB 2004).

Therefore, we have not considered any content from the web sites which may be associated with the web addresses to which applicant refers in its papers. The record on appeal is limited to materials properly made of record either by applicant or the examining attorney prior to appeal. 37 C.F.R. § 2.142(d). If an applicant wishes to rely on content from a web site, the applicant must print out the relevant content and submit it for the record prior to appeal with appropriate information as to the source.

With regard to applicant's suggestion that the Board take judicial notice of an unidentified atlas, we note that applicant could have made material from an atlas of record but did not do so. The Board may, in its discretion, take judicial notice of certain sources. In this case, we decline to do so.

Turning to the merits of applicant's arguments that there are other places known as HALF MOON BAY, the only

basis we have for finding that such places exist is applicant's assertion. Applicant's assertion is insufficient for this purpose. Even if applicant had supported this assertion with evidence, the existence of these other apparently obscure places outside the United States known as Half Moon Bay would be insufficient to refute the conclusion that the primary geographic significance of HALF MOON BAY is the place where applicant is located. The mere existence of other places of the same name is generally insufficient to negate a finding that a place name is primarily geographically descriptive. In re Loew's Theatres Inc., 769 F.2d 764, 226 USPQ 865, 868 (Fed. Cir. 1985); In re Cambridge Digital Systems, 1 USPQ2d at 1662.

Lastly, Applicant argues that the issuance of registrations for two marks, LIVINGSTON CELLARS and WOODBRIDGE, for wines supports registration in this case. Applicant argues that each of these marks identifies the place in California where the respective wines are produced. We reject this argument as well.

First we turn to the form of this evidence. In his brief the examining attorney objected to applicant's submission of the full electronic records regarding these registrations with applicant's brief. Applicant had

referred to the registrations in his response to the first office action. The examining attorney objected to the references in the final action indicating that the references were insufficient to make the registrations of record. Accordingly, we will not consider either the information applicant provided in the office action response or the full electronic copies of the registration information applicant provided with its brief. The information applicant provided with its response was insufficient to make the registrations of record and applicant's submission of the full records with its brief was untimely. 37 C.F.R. § 2.142(d). TBMP § 1208.02 (2d ed. rev. 2004).

Also, applicant provided no evidence to support its contention that Livingston and Woodbridge are place names. The examining attorney provided the relevant page from the geographical dictionary indicating that there is no entry for Woodbridge, California. More importantly, even if applicant had provided appropriate documents at the appropriate time to support this argument, we must determine whether a particular place name is "primarily geographically descriptive" according to the unique facts of each case. Neither the Board nor the examining attorney is bound by the prior actions of the Office in cases which

involve different facts. In re Nett Designs, Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). One could just as readily identify registrations for geographical place names for wine issued on the basis of acquired distinctiveness, consistent with the common law practice now codified in the Trademark Act which Judge Nies described. Nantucket, 213 USPQ at 895.

In conclusion, we have considered all of the evidence which is properly of record in this case and determined that HALF MOON BAY is primarily geographically descriptive for wines. Half Moon Bay, California is a place which is neither obscure nor remote, but rather a place which would be generally known to the purchasers of wine. And HALF MOON BAY is also a place which is associated with wines.

Decision: The refusal to register the mark because it is primarily geographically descriptive of the goods is affirmed.

EXHIBIT C

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB

Mailed: July 15, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bristol-Myers Squibb Company

Serial No. 78222332

Ruth E. Lazar of Fross Zelnick Lehrman & Zissu, P.C. for Bristol-Myers Squibb Company.

Heather D. Thompson, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Chapman, Bucher and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Bristol-Myers Squibb Company is seeking to register the mark PRINCETON PHARMACEUTICAL PRODUCTS for a "house mark for a line of pharmaceutical preparations," in International Class 5.¹ The application is based upon an allegation of a bona fide intention to use the mark in commerce.

¹ Application Serial No. 78222332, filed March 6, 2003.

The trademark examining attorney has refused registration under Section 2(e)(2) of the Trademark Act on the ground that applicant's mark is primarily geographically descriptive of its goods.

When the refusal was made final,² applicant appealed. Briefs have been filed. An oral hearing was not requested. It is the examining attorney's burden to establish the prima facie case in support of the refusal of registration. A prima facie case for refusal under Section 2(e)(2) that the mark is primarily geographically descriptive of the goods requires a showing that (1) the mark's primary significance is a generally known geographic location; and (2) that the relevant public would be likely to make a goods/place association, i.e., would be likely to think that the goods originate (or will originate) in the place named in the mark. See *In re Save Venice New York, Inc.*, 259 F.3d 1346, 59 USPQ2d 1778 (Fed. Cir. 2001); *In re Nantucket*, 677 F.2d 95, 213 USPQ 889 (CCPA 1982); and *In re California Pizza Kitchen, Inc.*, 10 USPQ2d 1704 (TTAB 1988).

A mark is not "primarily" geographic where the geographic meaning is minor, obscure, remote, or unconnected with the goods. *In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999); and

² The examining attorney also issued and subsequently made final a requirement under Trademark Rule 2.61(b) that applicant specifically state whether or not its goods are manufactured in Princeton, New Jersey. We have deemed this requirement waived as discussed later in this decision.

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In re Loew's Theatres, Inc., 769 F.2d 764, 226 USPQ 865, 867 (Fed. Cir. 1985) (use of a geographic term in a fictitious, arbitrary or fanciful manner, is not "primarily" as a geographic designation.)

Thus, registration should not be refused where, for example, there is a genuine issue that the place named in the mark is so obscure or remote that purchasers would fail to recognize the term as indicating the geographical source of the goods to which the mark is applied; or (2) an admittedly well-recognized term has other meanings, such that the term's geographical significance may not be the primary significance to prospective purchasers. See In re Cambridge Digital Systems, 1 USPQ2d 1659 (TTAB 1986).

Where, on the other hand, there is no genuine issue that the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant's own goods come from the geographical place named in the mark. See In re Societe General des Eaux Minerals de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); and In re Cambridge Digital Systems, *supra*.

Turning to the first part of the test, the examining attorney has submitted a listing from *The American Heritage*

Dictionary of the English Language, Fourth Edition (2000) that identifies "Princeton" as "[a] borough of central New Jersey north-northeast of Trenton. Founded by Quakers in 1696." This entry goes on to describe Princeton as "the seat of Princeton University (established in 1746...)." ³ The examining attorney also refers to a listing from the same dictionary that defines "pharmaceutical" as "a pharmaceutical product or preparation."

Applicant does not contend that "Princeton" is obscure or remote or that it is not a generally known geographic place. Rather it is applicant's contention that the primary significance of Princeton is not geographic because it has another meaning which is not geographic. Applicant notes that "Princeton is the home to Princeton University, a prestigious, world-renowned university founded centuries ago" as well as other esteemed educational institutions. (Response dated February 25, 2004, p. 2.) Applicant has submitted a page from the website of Princeton University (www.princeton.edu) containing a brief background and description of the University; and an entry for "Princeton University" from the website of <http://en.wikipedia.org> ("the free encyclopedia") stating that the University is "located in Princeton, New Jersey," that it is "one of the eight Ivy League universities," and that it is "widely regarded as one of the most

³ We take judicial notice of an entry in *Microsoft Encarta College Dictionary* (2001) that identifies "Princeton" as a "town" in New Jersey.

prestigious universities in the world." Applicant has also submitted the following entry from *The Columbia Gazetteer of North America* (2000) identifying "Princeton" as follows (abbreviations in original):

"borough (1990 pop. 12,016), Mercer co., W central N.J.; ...A leading education center, it is the seat of Princeton Univ., the Inst. for Advanced Study, Princeton Theological Seminary, Westminster Choir Co., St. Joseph's Col., and other institutions. Home to numerous natl. and internatl. corporate research centers and hq.

Further, applicant states, "there are two federal trademark registrations for PRINCETON and PRINCETON UNIVERISTY [sic], which are based on the acquired distinctiveness of the term PRINCETON under Section 2(f) of the Trademark Act." (Response dated February 25, 2004, p. 2.) Applicant has submitted copies of these registrations from the USPTO's TARR database.⁴

Based on the above evidence, applicant concludes that the association of the term "Princeton" with prestigious academics "is of equal if not greater significance than its association with a geographic locale." (Brief, p. 3.)

⁴ Registration No. 1498976 of PRINCETON UNIVERSITY for "providing educational services at the college and university level"; issued August 2, 1988 to The Trustees of Princeton University; Sections 8 and 15 affidavits accepted and acknowledged, respectively. "University" is disclaimed.

Registration No. 2219263 of PRINCETON for a variety of goods and services including pre-recorded audio and video tapes, computer programs, jewelry, publications, and variety store services; issued January 1, 1999 to The Trustees of Princeton University; Sections 8 and 15 affidavits accepted and acknowledged, respectively.

We find that the evidence sufficiently demonstrates that "Princeton" is the name of a generally known geographic location that is not obscure or remote to the public. The term is defined first as a geographic location in the dictionary reference submitted by the examining attorney as well as the *Gazetteer* reference supplied by applicant. The description of Princeton, New Jersey in these references in such terms as the "location of," "home of," or "seat of" the renown Princeton University as well as other leading research and educational facilities clearly enhances the term's geographic significance.

The evidence also shows that the geographic significance is the primary significance of the mark. We are unpersuaded by applicant's argument that the primary significance of "Princeton" is not geographic because the term has other meanings, and in particular, its association "with prestigious academics." As the examining attorney states in her brief, and the evidence shows, Princeton is "first and foremost" a geographic location.⁵ To the extent that "Princeton" does evoke an association with educational centers and institutions, that meaning is geographic as well. That is, the "educational" connotation is so closely connected to the town of Princeton that it does not overcome that

⁵ Applicant's reliance on *In re Cotter & Company*, 228 USPQ 202 (TTAB 1985) is misplaced here. The evidence in that case identified "West Point" as a military post or installation rather than a geographic place.

term's primary meaning as a geographic term. See, e.g., In re Oproyland USA Inc., 1 USPQ2d 1409, 1413 (TTAB 1986) (finding THE NASHVILLE NETWORK primarily geographical notwithstanding that Nashville "has other imagery than the city of Nashville, e.g., education, i.e. the 'Athens of the South'; country music; Printer's Alley; a particular musical sound, i.e., 'The Nashville Sound', etc."). See also In re Cambridge Digital Systems, supra (finding CAMBRIDGE DIGITAL for computer systems primarily geographically descriptive notwithstanding that Cambridge is the name of a noted university in England and that Cambridge, Massachusetts is renowned for the educational institutions located there).

Applicant's reliance on the PRINCETON and PRINCETON UNIVERSITY registrations to support its position that the mark is not primarily geographic is curious. The registrations actually support the examining attorney's position, not the applicant's. They provide further evidence of the primary meaning of "Princeton" as a geographic term. The owner of these registrations presumably acknowledged the primary significance of Princeton as a geographic term as it sought registration based on a claim of acquired distinctiveness of its marks under Section 2(f) of the Trademark Act.

To the extent applicant is arguing that the geographic meaning of Princeton is no longer the primary meaning, or that the primary meaning has been overtaken by its acquired meaning as an "educational center" in view of the renown of the University, similar arguments have been addressed by the Board in the context of surnames. In particular, in *In re McDonald's Corporation*, 230 USPQ 304, 307 (TTAB 1986), the Board held:

...[F]or purposes of Section 2(e)(3) of the Act, the word "primarily" refers to the primary significance of the term, that is, the ordinary meaning of the word, and not to the term's strength as a trademark due to widespread advertising and promotion of the term as a mark to identify goods and/or services. [Citations omitted.]

In the present situation, the term "McDonald's" has no ordinary meaning other than as the possessive form of a relatively common surname in the United States. The Board readily concedes that the association of "MCDONALD'S" as a source indicating trademark and service mark has probably overtaken the original meaning of the word as a surname. However, this is due to the distinctiveness that has been acquired by the term over the years. ...

The primary significance of term "Princeton" is geographic, and the primary significance of PRINCETON PHARMACEUTICAL PRODUCTS as a whole is geographic. The addition of generic and/or merely descriptive words to a geographical term does not overcome the primary geographic significance of the mark as a whole. See *In re U.S. Cargo Inc.*, 49 USPQ2d 1702 (TTAB 1998); and *In re Cambridge Digital Systems*, supra. Unlike the composite marks in

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the cases relied on by applicant such as In re Urbano, 51 USPQ2d 1776 (TTAB 1999) (SYDNEY 2000 for advertising and business services) and In re Jim Crockett Promotions, Inc., 5 USPQ2d 1455 (TTAB 1987) (THE GREAT AMERICAN BASH for wrestling matches), there is nothing added to PRINCETON, a geographic term, to render the mark in its entirety registrable. The wording PHARMACEUTICAL PRODUCTS is generic for pharmaceutical preparations, and the combination does nothing to alter the geographic significance of PRINCETON alone.

We find no genuine issue that the primary significance of PRINCETON PHARMACEUTICAL PRODUCTS is a geographic place which is not obscure or remote but rather is generally known to the public.

With respect to the second part of the test, the examining attorney argues that purchasers are likely to believe that applicant's goods will originate in Princeton because (1) at the least, applicant's goods are researched and developed in Princeton and (2) Princeton is known for pharmaceutical products and pharmaceutical companies. In support of her position, the examining attorney has submitted pages from applicant's website (www.bms.com); pages of an Internet search summary; and excerpts of articles obtained from the NEXIS database. This evidence shows, according to the examining attorney, that pharmaceutical

products in general and applicant's pharmaceutical products in particular are connected to Princeton, New Jersey.

Applicant, on the other hand, argues that the evidence is insufficient to establish the requisite goods/place association. Specifically, applicant contends that the examining attorney has not established that Princeton "is known for or associated with pharmaceutical products" (Response dated February 25, 2004, p. 4); that while applicant does maintain a research facility in Princeton, this fact is not widely known to purchasers such that there would be any association with applicant and Princeton on the part of consumers at large; that applicant is a global pharmaceutical company and maintains other major research facilities in the United States and throughout the world; and that there is no evidence that consumers "make any association at all between Princeton and pharmaceutical products." (Reply Brief, p. 3.)

In establishing a prima facie case that there is a goods/place association between pharmaceutical products and Princeton, the examining attorney need not show that the public would actually make the asserted association, i.e., that the public actually believes the goods originate in Princeton. Rather the examining attorney need only show a "reasonable basis" for concluding that the public would make the goods/place association. In re Loew's Theatres, Inc., supra at 868.

Thus, contrary to applicant's contention, the examining attorney need not show that Princeton, New Jersey is "known for pharmaceutical products" or that applicant's research facility is "widely known" to purchasers, or that "consumers at large" would actually make the association. In fact, where, as here, it has been shown that the primary significance of the mark is geographic and the place is not obscure or remote, it is sufficient to show that applicant's goods originate or will originate in the area named in the mark.⁶ In re Carolina Apparel, 48 USPQ2d 1542, 1543 (TTAB 1998) (if a geographic term in a mark is neither remote nor obscure and the geographic significance is the primary connotation of the term, and where the goods or services actually originate from the geographic place designated in the mark, a public association of the goods or services with the place may ordinarily be presumed); and In re Handler Fenton Westerns, 214 USPQ 848 (TTAB 1992). Thus, we turn to the question of whether applicant's goods originate or will originate from Princeton, New Jersey.

We note in this regard that the examining attorney required, in her initial Office action, that applicant indicate specifically whether the goods will be manufactured or produced

⁶ Unlike the obscure and remote French town of Vittel in In re Societe General des Eaux Minerals de Vittel S.A., supra, the evidence in the present case shows that the town of Princeton is generally known to the American public.

in, or will have any other connection with, Princeton, New Jersey. Applicant's response was evasive, stating only that its corporate offices are located in New York, that it does have a research facility located in Princeton, New Jersey, and that its research center is not a manufacturing facility. (Response dated February 25, 2004, p. 4.) The examining attorney, noting that applicant failed to address the requirement, made the requirement final. In response, applicant stated: "Applicant wishes to clarify that although it has a research facility in Princeton, the pharmaceuticals that are the subject of research are neither manufactured nor otherwise produced *at this facility.*" (Req. for Recon., unnumb. p. 4, emphasis added.)

It seems to us that applicant has carefully avoided directly answering the examining attorney's inquiry about whether applicant's pharmaceuticals will be produced in Princeton. However, because the examining attorney did not further pursue the requirement or even mention it in either her denial of applicant's request for reconsideration or her appeal brief, we deem the requirement waived.

Nevertheless, we find that despite applicant's failure to answer the question asked, the record as a whole, including the uncontroverted evidence submitted by the examining attorney shows that the goods do or will in fact come from Princeton. The NEXIS evidence submitted by the examining attorney shows, and applicant

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does not dispute, that applicant, Bristol-Myers Squibb Company, not only researches, but manufactures pharmaceuticals in Princeton, New Jersey. For example:

Chewable Ovcon-35 will be manufactured by Bristol-Myers Squibb Co. in Princeton, N.J. *Pittsburgh Post-Gazette* (Pennsylvania) (December 23, 2003); and also in *Albuquerque Journal* (New Mexico) (December 22, 2003).

Reyataz is manufactured by Bristol-Myers Squibb Co. of Princeton, N.J. *FDA Consumer*, September 9, 2003.

Peninsula Research Associates recently completed an open-label Phase 2 trial of Tequin gatifloxacin, manufactured by Bristol-Myers Squibb Princeton, N.J. *Applied Clinical Trials* (March 1, 2002).

The bridegroom, 26, was until last week a summer intern in the marketing strategy department of Bristol-Myers Squibb, the pharmaceuticals manufacturer, in Princeton, N. J. *The New York Times* (August 19, 2001).

Bristol-Myers Squibb Co., based in Princeton, N.J., manufactures Glucophage *Crain's Detroit Business* (June 25, 2001).

Applicant's broadly worded identification for a "line of pharmaceutical preparations" encompasses all pharmaceuticals, including those pharmaceuticals referenced above. Even if applicant's "PRINCETON" line of pharmaceuticals is not or will not be actually manufactured in Princeton, at a minimum, the NEXIS and other evidence of record shows that significant activities relating to applicant's pharmaceutical products emanate from Princeton, New Jersey. Applicant admittedly has a pharmaceutical research facility in Princeton. Moreover,

applicant has received media recognition relating to the town of Princeton. The "Newsroom" page of applicant's website contains an article dated June 24, 2003 from Time Inc.'s *health* magazine with the following headline:⁷

Princeton, New Jersey-Based Bristol-Myers Squibb Named
Among 10 Healthiest Companies For Women In U.S.:
Health Report

In addition, applicant's pharmaceutical research headquarters are in Princeton. The following statement appears on the "About Us - Our Company - Our History" page of applicant's website:

In 1990 the Bristol-Myers Squibb Pharmaceutical Research Institute was established with headquarters in Princeton, New Jersey...

Clearly, the record shows that a public association is likely between applicant's goods and Princeton, New Jersey in view of the fact that, at a minimum, applicant has a pharmaceutical research facility and moreover its pharmaceutical research headquarters there. See, e.g., *In re Nantucket Allserve, Inc.*, 28 USPQ2d 1144, 1146 (TTAB 1993) (NANTUCKET NECTARS is primarily geographically descriptive of soft drinks,

⁷ Applicant, in its reply brief (p. 4), argues that because this statement "was not created by Applicant but rather by a third-party" it is of no probative value. We find the statement probative, not for the truth of the matter asserted, but as evidence that applicant has a substantial presence in Princeton. We also note that the statement appears on applicant's own website and applicant has not disputed its accuracy.

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where company has its research and development center, but not its manufacturing facilities, on Nantucket).

Under the circumstances, nothing more need be shown by the examining attorney in order to establish a goods/place association. See *In re Oproyland USA Inc.*, supra at 1413 (TTAB 1986) ("[I]n that the evidence shows a substantial part of appellant's commercial activities emanate from or are related to Nashville, Tennessee, and that city is not obscure or remote, it is unnecessary for the Examining Attorney to establish by other evidence that a services/place relationship exists between appellant's services and the city of that name.").

However, there is additional support in the record for a goods/place association. Not only are applicant's own pharmaceutical research center and headquarters located in Princeton, but the *Gazetteer* entry submitted by applicant states that Princeton is "[h]ome to numerous nat[ional], and internat[ional], corporate research centers and [headquarters]." The NEXIS evidence and Internet search summary made of record by the examining attorney similarly indicate that other pharmaceutical companies (e.g., Convance, Inc., Novo Nordisk Pharmaceuticals, Ranbaxy Pharmaceuticals Inc., Lexicon Pharmaceuticals) are located in or near Princeton, New Jersey.

We find that the record establishes prima facie that the public is likely to believe that applicant's pharmaceutical products emanate from Princeton, New Jersey.⁸

The fact that applicant's *corporate* headquarters are not in Princeton or that applicant has research facilities in geographic locations other than Princeton does not detract from the prima facie case made by the examining attorney or the perception of Princeton as at least one of the geographic sources of applicant's pharmaceuticals. See, e.g., *In re California Pizza Kitchen, Inc.*, 10 USPQ2d 1704, 1706 (TTAB 1988) (whether an applicant manufactures some of the goods outside of the geographical area named in the mark is not controlling).

In further support of its position that the mark is registrable, applicant states that it is the owner of an incontestable registration (Registration No. 1432671) for the same mark, PRINCETON PHARMACEUTICAL PRODUCTS, for "analgesics and anti-inflammatory pharmaceutical preparations." Applicant argues that "the nature of the goods in both the prior registration and the present application is identical, i.e., pharmaceuticals." (Brief, p. 9., emphasis in original.) Applicant also states that

⁸ Thus, this case is distinguishable from the cases relied on by applicant such as *Hyde Park Clothes, Inc. v. Hyde Park Fashions, Inc.*, 93 USPQ 250 (SDNY 1951), *aff'd*, 204 F.2d 223, 97 USPQ 246 (2d Cir. 1953), *cert. denied*, 346 U.S. 827, 99 USPQ 491 (1953) and *In re Jacques Bernier, Inc.*, 894 F.2d 389, 13 USPQ2d 1725, (Fed. Cir. 1990). The evidence in those cases, unlike the present one, did not establish a goods/place association.

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it was the owner of now cancelled Registration No. 1488069 (cancelled in 1994) "of the same mark for the identical goods." (Brief, p. 2.) It is applicant's contention that the issuance of these registrations "is prima facie evidence that the [USPTO] did not consider this mark to be geographically descriptive, which should govern the current registrability analysis under principles of res judicata and collateral estoppel." (Id.)

Applicant did not furnish copies of these registrations or the contents of the registration files and the Board does not take judicial notice of such records. However, because the examining attorney did not object on this basis, we will consider applicant's arguments related thereto. For purposes of this decision, we will assume that both registrations are what applicant represents them to be including that they both issued on the Principal Register.

We disagree that the refusal to register constitutes a collateral attack on applicant's existing Registration No. 1432671. While the goods in that registration are identified as "analgesic and anti-inflammatory pharmaceutical preparations," the goods in the present application are identified broadly as a "house mark for a line of pharmaceutical preparations," which would logically include additional and different pharmaceutical products. Ownership of an incontestable registration does not give applicant a right to register the same mark for different

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goods. See *In re Loew's Theatres Inc.*, supra at 869 ("Nothing in the statute provides a right *ipso facto* to register a mark for additional goods when items are added to a company's line or substituted for other goods covered by a registration."); and *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987) (incontestable registration for specific services involving credit cards does not automatically entitle applicant to a registration for broader financial services). Each application for registration of a mark for particular goods must be separately evaluated. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); and *In re McDonald's Corporation*, 230 USPQ 304, 307 (TTAB 1986). See also *In re Stenographic Machines, Inc.*, 199 USPQ 313, 317 (Comm'r Pats. 1978) ("Consistency of Office practice must be secondary to correctness of Office practice.").

Furthermore, collateral estoppel does not apply to cancelled registrations. A cancelled registration is not entitled to any of the statutory presumptions of Section 7(b) of the Trademark Act. See, e.g., *In re Hunter publishing Company*, 204 USPQ 957, 963 (TTAB 1979) (cancellation "destroys the Section [7(b)] presumptions and makes the question of registrability 'a new ball game' which must be predicated on current thought.").

In any event, applicant has failed to provide potentially relevant information about the registrations. We have no

information as to whether those registrations issued under Section 2(f) and we are left to speculate as to what the record in those cases showed, such as whether there was any inquiry by the examining attorney in those cases as to the geographic nature of the mark.

Finally, we note that applicant has included in its brief a typed listing of third-party registrations that consist of or include the term "Princeton." The listing identifies only marks, registration numbers and goods/services. Applicant argues based on this evidence that the registration of the term "for a broad spectrum of goods and services...is evidence of its registrability on the Principal Register." (Brief, p. 10.) The examining attorney objected to the listing only insofar as copies of the registrations were not submitted and not to the timeliness of the evidence. We have therefore treated the evidence as properly of record. However, we find it of no probative value for a number of reasons. Most notably, applicant has omitted significant information about the listed registrations such as whether the marks issued on the Principal Register, or whether they issued under Section 2(f), or whether the geographic terms in the marks were disclaimed, making it impossible to evaluate the evidence in any meaningful way.

We find that the examining attorney has made a prima facie case that applicant's mark is primarily geographically

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descriptive of applicant's goods and that applicant has failed to rebut the prima facie case. See *In re Pacer Technology*, 338 F.3d 1348, 67 USPQ2d 1629 (Fed. Cir. 2003).

Decision: The refusal to register is affirmed.

EXHIBIT D

LEXSEE 2002 TTAB LEXIS 400

In re American International Group, Inc.

Serial No. 75/278,430

Trademark Trial and Appeal Board

2002 TTAB LEXIS 400

June 25, 2002, Decided

[*1]

Before Cissel, Seeherman and Walters, Administrative Trademark Judges.

COUNSEL:

Mark J. Liss, Anne E. Naffziger and Elizabeth C. Diskin of Leydig, Voit & Mayer, Ltd. for American International Group, Inc.

Chrisie Brightmire King, Trademark Examining Attorney, Law Office 109 (Ron S. Sussman, Managing Attorney).

OPINIONBY: SEEHERMAN

OPINION:

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE TTAB

Opinion by Seeherman, Administrative Trademark Judge:

American International Group, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register GRANITE STATE INSURANCE COMPANY, with the words INSURANCE COMPANY disclaimed, for the following services:

financial guarantee and surety; insurance underwriting in the fields of property, casualty, specialty workers' compensation, healthcare and automobile insurance to domestic and foreign markets." n1

n1 Application Serial No. 75/278,430, filed April 21, 1997, and asserting first use and first use in commerce as early as January 1, 1996.

Registration has been refused pursuant to Section 2(e)(3) of the Trademark Act, 15 U.S.C. 1052(e)(3), on the ground that applicant's mark is primarily geographically [*2] deceptive misdescriptive of applicant's identified services. Specifically, the Examining Attorney contends that GRANITE STATE INSURANCE COMPANY is a primarily geographic term because GRANITE STATE is a nickname for the state of New Hampshire; that applicant's services do not come from the state of New Hampshire; and that insurance services are offered by businesses in that state, such that consumers will mistakenly associate applicant's services with New Hampshire.

The appeal has been fully briefed. n2 An oral hearing was not requested.

n2 The Examining Attorney has objected to third-party registrations which applicant attached to its appeal brief as being untimely filed. However, as applicant points out in its reply brief, these registrations were previously properly made of record with applicant's request for reconsideration. Accordingly, they have been considered.

We affirm the refusal of registration.

We note at the outset that in the first Office action, the Examining Attorney refused registration under Section 2(3)(2) on the ground that the mark was primarily geographically descriptive if applicant's services came from the state of

New Hampshire, and alternatively under [*3] Section 2(e)(3), on the basis that the mark was primarily deceptively misdescriptive if applicant's services did not originate from that state. In response to this action, applicant stated that it "does not have a GRANITE STATE INSURANCE COMPANY office in the state of New Hampshire" and that "the services are offered from offices in New York, Massachusetts, Connecticut, Pennsylvania and New Jersey. Additionally, the Granite State Insurance Company itself is a Pennsylvania company, not a New Hampshire company." (Although applicant did not mention this in its response, its application identifies itself as a Delaware corporation.) On the basis of this response, the Examining Attorney withdrew the refusal based on geographic descriptiveness, and made a final refusal of registration on the ground that the mark is primarily geographically deceptively misdescriptive.

In its brief on appeal, applicant for the first time mentioned that its "assets are wholly owned by a New Hampshire-based company." The Examining Attorney commented in her brief that this fact would not cause the mark to be found geographically descriptive, rather than deceptively misdescriptive, and therefore there is no need [*4] to remand the application to her to consider this information. However, we must comment on applicant's lack of candor in its response to the first Office action, particularly because its statements were directed to overcoming the refusal on the ground of geographic descriptiveness.

This brings us to the question of whether GRANITE STATE INSURANCE COMPANY is primarily geographically deceptively misdescriptive of applicant's identified services.

Whether a mark is primarily geographically deceptively misdescriptive is determined according to a two-part test: (1) is the mark's primary significance a generally known geographic location; and (2) would consumers reasonably believe the applicant's goods are connected with the geographic location in the mark, when in fact they are not. *In re Save Venice New York Inc.*, 259 F.3d 1346, 59 USPQ2d 1778 (Fed. Cir. 2001) *In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999); *Institut National des Appellations d'Origine v. Vintners Int'l Co.*, 958 F.2d 1574, 22 USPQ2d 1190 (Fed. Cir. 1992).

The first question [*5] is whether the primary meaning of GRANITE STATE INSURANCE COMPANY is geographic. The Examining Attorney has asserted, and applicant does not argue this point, that the additional words INSURANCE COMPANY in the mark do not remove whatever geographic connotation GRANITE STATE may have. We agree. The words INSURANCE COMPANY, which have been disclaimed by applicant, are highly descriptive, if not generic, for the services. See *In re Save Venice New York Inc.*, supra (it is not erroneous to consider the significance of each element within the composite mark in the course of evaluating the mark as a whole). It is clearly the term GRANITE STATE which is the dominant part of applicant's mark, and it is the significance of this term which determines the significance of the mark. n3

n3 Applicant has made the argument that GRANITE is the dominant part of the mark because the word STATE is used in various third-party registrations. We disagree. Because of the use of GRANITE STATE as a nickname for the state of New Hampshire, as discussed herein, it is the term GRANITE STATE which is dominant.

In support of her position that the primary significance of GRANITE STATE, and therefore GRANITE [*6] STATE INSURANCE COMPANY, is geographic, the Examining Attorney has submitted a dictionary definition showing that the nickname of New Hampshire is "Granite State," n4 and the following articles which refer to New Hampshire as the Granite State:

Begun in July 1993, BlueChoice provides health insurance for about 100,000 Granite State residents.

"The Union Leader" (Manchester, NH), January 20, 2000

Medical insurance reform--what to do about the exodus of health insurance providers from the Granite State.

"The Union Leader," December 26, 2000

Now, the governor says her goal is to ensure every child in the Granite State has health insurance.

"American Health Line," November 8, 2000

...according to a separate Progressive study of premium variance in New Hampshire, the cost for an identical auto insurance policy for Granite State motorists varies an average of \$332 every six months.

"New Hampshire Business Review," September 22, 2000

n4 Webster's New Geographical Dictionary.

Applicant argues that GRANITE STATE will not be recognized by consumers as a geographic location because the "Granite State" is not widely known as a nickname for New Hampshire. Applicant points [*7] out that of the above four articles submitted by the Examining Attorney, three were from New Hampshire publications, and the article from the national publication, "American Health Line," was a multistate update and the Granite State reference was under the subheading for New Hampshire. n5 Applicant also notes that the articles refer to "the Granite State" or "Granite State residents," rather than "Granite State" per se.

n5 In support of this point, applicant submitted with its brief a copy of the entire article from "American Health Line." Although it was not made of record during the examination of the application, because the Examining Attorney had previously made of record a portion of the article, we do not consider the submission to be untimely under Trademark Rule 2.142(d), and have considered the entire article. See *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986).

Applicant has also submitted the results of a search for "granite" which it did in the on-line Merriam-Webster's Collegiate Dictionary. n6 This search did not retrieve a listing for "granite state." From this fact, applicant contends [*8] that it is "highly likely that the nickname 'Granite State' is so scarcely known as to render it not even worthy of retrieval in an online dictionary that searches for a word or words in any related string of term." Brief, p. 5. It is not clear to us that the online dictionary will retrieve a word wherever it may be in the database, including words which may appear anywhere within a definition. The three "granites" which were retrieved by applicant's search all appear to be from the actual listing of words which are defined, and we find it hard to believe that in an entire dictionary the word "granite" would not be used as part of a definition. In any event, we take judicial notice of a listing for "Granite State as a separately defined term in the abridged The American Heritage Dictionary of the English Language, (c) 1970 ('Granite State. A nickname for New Hampshire').

n6 This was submitted as an exhibit to applicant's appeal brief, but we have considered it because the Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

[*9]

Nor are we persuaded by applicant's other arguments. The fact that the articles do not include a phrase that literally equates Granite State with New Hampshire, such as "Granite State, a nickname for New Hampshire," does not mean that "Granite State" is not readily recognized as a nickname for New Hampshire. Indeed, the fact that the articles refer to "the Granite State" or "Granite State residents" or "Granite State motorists" shows that readers of the articles are assumed to know that "Granite State" is another way of referring to the state of New Hampshire. Even if we accept that only people living in New Hampshire would know their state's nickname, these residents are among the consumers of applicant's insurance services. n7 The population of New Hampshire is large enough that "Granite State" cannot be considered an obscure place name. See *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985) (Durango is not an obscure place name to the Mexican population of this country nor to reasonably informed non-Mexicans).

n7 Whether or not applicant currently offers its services to residents of New Hampshire, its identification is not restricted, and we must therefore presume that such residents are among its customers.

[*10]

Thus, the present situation is distinguishable from *Rockland Mortgage Corp. v. Shareholders Funding, Inc.*, 835 F. Supp. 182, 30 USPQ2d 1270 (D. Del. 1993) upon which applicant relies. In *Rockland*, the Court held that Rockland is "an obscure geographic location in Northern Delaware" because, although the it is the name of a neighborhood in Delaware, it includes only one business (as well as residential condominiums, several estates, and a post office which does not deliver mail). GRANITE STATE, the nickname of a state of the United States with a significantly larger population than a "neighborhood," is not an obscure geographic place.

Moreover, it seems unlikely to us that only residents of New Hampshire would be aware of the state's nickname. Certainly people living in neighboring states such as Vermont, Maine and Massachusetts, because of their proximity to

New Hampshire, are likely to know of the nickname. More importantly, as applicant has stated, "American Health Line" is a national publication, and its writer and editors must have considered the nickname to be well enough known nationally to have used it in the article which is [*11] of record.

It should also be noted that courts and this Board have, in the past, found state nicknames to be recognized geographic terms. In *In re Charles S. Loeb Pipes, Inc.*, 190 USPQ 238, (TTAB 1975), a case remarkably similar to the case at hand, in that the applicant therein argued that OLD DOMINION would not be recognized as a nickname for the Commonwealth of Virginia, the Board stated, at 245:

It is clear from the documents made of record by the Examiner that this term is the accepted nickname for the State of Virginia. Obviously, not all people throughout the country are aware of this significance of "OLD DOMINION", and manifestly it is doubtful that many know the nicknames for all or even a portion of the fifty states. But, this is of no moment in a proceeding of this character for it is sufficient for our purposes that it is an accepted nickname for a state and would be recognized as such by a segment of the purchasing public.

Accordingly, we find that the Office has met its burden of proving that the first part of the test, namely that the primary significance of GRANITE STATE, and of GRANITE STATE INSURANCE COMPANY, is a that of a generally [*12] known geographic location.

The second prong of the test is whether consumers are likely to make a goods/place (or in this case, services/place) association between the identified services and New Hampshire, the place named in the mark. The Examining Attorney has made of record the following article from the NEXIS database which mentions three large New Hampshire-based insurance companies: n8

In the mid-1980s, 3 large New Hampshire-based insurance companies, Matthew Thornton, Health-source, and NH Blue Cross, dominated the New Hampshire health insurance market. By the mid-1990s, 2 Massachusetts HMOs expanded into New Hampshire.
"Patient Care," January 15, 2001

n8 Several of the articles submitted by the Examining Attorney refer to the regulation of insurance activities, including Story 31 mentioned by the Examining Attorney at p. 7 of her brief, and articles referring to the New Hampshire Insurance Commissioner. They are not evidence that insurance services originate in New Hampshire. Other stories are taken from wire service reports, and because we cannot determine whether these reports were actually published, we cannot say that they have received any public exposure. We have not given these types of articles any consideration.

[*13]

The Examining Attorney has also submitted material taken from various websites for insurance companies which are located in New Hampshire and which advertise their insurance services.. They include FIS Financial Insurance Services Inc. (www.fisins.com); Cronin & Gervino Insurance (www.cronin-gervino.com); Cullity Insurance (www.cullityinsurance.com); Hometown Insurance Agency (www.hometownins.com); and The Sadler Insurance Agency (www.sadler.com).

This evidence shows that insurance services do originate in the state of New Hampshire. In addition, applicant acknowledges that "there are insurance companies in every state in America." Brief, p. 8. This evidence is sufficient to establish the requisite goods/place association between insurance services and the state of New Hampshire. Applicant asserts, however, that this evidence is not sufficient to show that New Hampshire is known for insurance, in the same way that, as applicant puts it, North Carolina has a reputation for furniture, California for wine, the Southwest for silver jewelry, New York for bagels, and Maryland for crab. "The Examiner has cited no evidence that New Hampshire has a reputation or association [*14] with insurance greater than any other state in America. Moreover, there is no reason to believe that consumers would be more interested in purchasing Applicant's goods and services if they believed that the service did, in fact, emanate from New Hampshire." Brief, p. 9

The test applicant has posited is incorrect. As our primary reviewing Court reiterated in *In re Loew's Theatres, Inc.*, supra at 867-68, while [*In re Nantucket*, 677 F.2d 95, 213 USPQ 889 (CCPA 1982)] "requires a goods/place association to support a refusal to register under § 2(e) (2), n9 it does not follow that such association embraces only instances where

the place is well-known or noted for the goods, a position which the *Nantucket* applicant, as well as [applicant herein], have urged. The court, in *Nantucket*, did not adopt that position. Rather, our precedent continues to hold that to establish a "primarily geographically deceptively misdescriptive" bar, the PTO must show only a reasonable basis for concluding that the public is likely to believe the mark identifies the place from which the goods originate and that the goods do not come from there."

n9 This case was decided prior to the amendment of the Lanham Act, when the provisions of current sections 2(e) (2) and 2(e) (3) were combined as Section 2(e) (2).

[*15]

As for applicant's comment that there is no evidence that consumers would be more interested in purchasing applicant's services if they believed they emanated from New Hampshire, the materiality of the misrepresentation to the purchasing decision goes to the question of whether the mark is geographically deceptive under Section 2(a) of the Act, not whether it is primarily geographically deceptively misdescriptive under Section 2(e) (3).

In conclusion, we find that that the Office has established that the primary significance of GRANITE STATE INSURANCE COMPANY is geographic, and has further established that consumers would reasonably believe applicant's services are connected with the geographic location in the mark, when in fact they are not. Accordingly, we hold that the mark is primarily geographically deceptively misdescriptive of applicant's services, and is prohibited from registration by Section 2(e) (3) of the Act.

Decision: The refusal of registration is affirmed.

EXHIBIT E

Mailed:
December 3, 2004

**This Opinion is Not
Citable as Precedent
of the TTAB**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fashion Group S.N.C. Di Bertoncello
Maria Luisa & Michela & C.

Serial No. 76006037

Harvey B. Jacobson, Simor L. Moskowitz and Matthew J.
Cuccias of Jacobson Holman, PLLC for Fashion Group S.N.C.
Di Bertoncello Maria Luisa & Michela & C.

Barbara Gold, Trademark Examining Attorney, Law Office 106
(Mary Sparrow, Managing Attorney).¹

Before Walters, Chapman and Rogers,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Flash & Partners S.r.l., a joint stock company of
Italy, applied to register the stylized mark set forth
below for a wide variety of clothing items in Class 25.
The application was based on the stated intention of the

¹ Examining attorney James Marcus issued the initial and final refusals, and denied applicant's request for reconsideration. Ms. Gold issued two actions after the appeal was suspended and the application was remanded for further examination; and she later filed the Office's brief for the appeal.

Ser No. 76006037

applicant to use the mark in commerce. The application subsequently was assigned to Fashion Group S.N.C. Di Bertoncello Maria Luisa & Michela & C. and the assignment has been recorded in USPTO records at Reel 2517, Frame 0851.

No-Lita
NORTH LITTLE ITALY

There were many office actions and responses during prosecution of this application, both before applicant filed its notice of appeal and after it requested a remand of the appeal to make further evidentiary submissions and arguments. Suffice it to say that the original examining attorney made final a refusal of registration, which we discuss below, and applicant obviously has appealed. The only issue to be decided on appeal is that refusal of registration, made under Section 2(e)(3) of the Lanham Act, 15 U.S.C. § 1052(e)(3). Before addressing the refusal, however, we discuss amendments of the identification of goods and mark.

As filed, the application listed the following identification of goods: "dresses, coats, overcoats, raincoats, jackets, sports jackets, trousers, jeans, shorts, skirts, track suits, sweaters, shirts, t-shirts, cardigans, dressing gowns, night gowns, pyjamas, petticoats, socks, stockings, tights, gloves, scarves, foulards (neckerchiefs), belts, waistcoats, bathing suits, hats, caps, shoes, boots, sandals, slippers." When the identification of goods information in the application was entered into USPTO records, the Office inadvertently omitted the first five items -- "dresses, coats, overcoats, raincoats, jackets."

The original examining attorney, in the first office action, required applicant to make two minor amendments to the identification. Specifically, he required "pyjamas" be amended to "pajamas" and required "foulards (neckerchiefs)" be amended to "foulards, neckerchiefs." The examining attorney then set forth, in one block paragraph, the identification listed in USPTO records (not the identification listed in the application) but with the changes included. Applicant, in response, adopted the examining attorney's proposed amended identification. Applicant did not point out that "dresses, coats, overcoats, raincoats, jackets" had been omitted. Further,

in briefing this appeal, both applicant and the examining attorney have recited the adopted amended identification as the operative identification. Accordingly, we consider the amended identification adopted by applicant to have entered the two minor changes required by the examining attorney and to have effectively deleted "dresses, coats, overcoats, raincoats, jackets" from the identification as filed.

As for the mark, though no mention of a deficiency in the drawing was made prior to appeal, on remand the substituted examining attorney asserted first, that the mark drawing was of poor quality and would not reproduce well, and second, that it impermissibly combined stylized lettering and typed lettering. This examining attorney required the applicant to submit an amended drawing "entirely in special form." Applicant then submitted an amended drawing entirely in typed form rather than in special form. The examining attorney nonetheless accepted this amendment. Thus, the mark involved in this appeal is now NO-L-ITA NORTH LITTLE ITALY.²

² We note applicant's statement, in footnote 2 of its main brief, "that its mark is NO-L-ITA stylized, and not NOLITA, such that this stylized, distinctive and arbitrary depiction of the mark is, in and of itself, a basis for overcoming the Examiner's 2(e) refusal." We take this not as a reference to the mark in the original drawing or as any indication that applicant now contends that NORTH LITTLE ITALY is not part of its mark, but merely as a contention that the NO-L-ITA term in its mark is "stylized" as compared to a presentation of that term as NOLITA.

In view of the above-discussed circumstances, the refusal to register now before us is a refusal to register NO-L-ITA NORTH LITTLE ITALY for "sports jackets, trousers, jeans, shorts, skirts, track suits, sweaters, shirts, t-shirts, cardigans, dressing gowns, night gowns, pajamas, petticoats, socks, stockings, tights, gloves, scarves, foulards, neckerchiefs, belts, waistcoats, bathing suits, hats, caps, shoes, boots, sandals, slippers." The refusal is based on Section 2(e)(3) of the Lanham Act, and the examining attorney's contention that the mark, when used, would be geographically deceptively misdescriptive of applicant's clothing goods.

As both the applicant and the examining attorney acknowledge:

[T]he PTO must deny registration under §1052(e)(3) if (1) the primary significance of the mark is a generally known geographic location, (2) the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place, and (3) the misrepresentation was a material factor in the consumer's decision.

In re California Innovations, Inc., 329 F.3d 1334, 66 USPQ2d 1853, 1858 (Fed. Cir. 2003). See also, In re Les Halles De Paris J.V., 334 F.3d 1371, 67 USPQ2d 1539 (Fed. Cir. 2003), and In re Consolidated Specialty Restaurants, Inc., 71 USPQ2d 1921 (TTAB 2004).

Summary of Arguments

In particular, the examining attorney contends that that NO-L-ITA is shorthand for "North Little Italy" or "North of Little Italy"; that applicant's coupling of NORTH LITTLE ITALY with NO-L-ITA reinforces the perception of the hyphenated term as shorthand for the full phrase; that "NoLIta" is a geographic term designating a particular neighborhood or small section of the borough of Manhattan in New York City;³ that the area is known for retailing of trend-setting fashions; that the area and its association with trend-setting fashions and fashion designers would be known by consumers of applicant's identified goods; that origin of such goods in the place identified by the term "NoLIta" would be a material factor in the purchasing decisions of consumers; and that applicant's goods will not come from the place known as "NoLIta."

Applicant "does not dispute the evidence [made] of record [by the initial action refusing registration] that the 'Nolita' term may refer to an area of New York City," and has stated "that neither Applicant nor its goods come

³ The examining attorney contends that whether displayed as NOLITA, NO-L-ITA, or in any combination involving upper and lower case letters, the term has the same connotation. The record in this case reveals that various presentations of the term are employed, we use NO-L-ITA when referring to the term in applicant's proposed mark and "NoLIta" when referring to the area in Manhattan.

from any locale known as 'Nolita.'"⁴ Response to office action, April 19, 2001. Applicant, however, does dispute that "NoLIta" is anything more than a designation of a "small area [of New York City] recently 'dreamed up' by ... real estate brokers" so as to "brand" the area and thereby increase property values. Brief, p. 8 (emphasis by applicant). In essence, applicant contends that the name for this area of New York City is a "passing fancy" and already "on the wane," so that it cannot truly be considered a "generally known" geographic term.⁵ In

⁴ Further, in arguing that the refusal is implausible, applicant contends that because "Italy is a world famous center for fashion design and manufacture[]" ... an effort to conceal the Italian origin of the Applicant and its goods in favor of a misrepresentation of U.S. origin would not be of any benefit to the Applicant."

⁵ In its brief, applicant asserts that "Nolita is not a continent, country, province, state, city, town, or topographical feature." P. 7. It first made this observation in its request for reconsideration of the final refusal, where applicant also posited that a neighborhood in a city may not qualify as a geographic location under the Trademark Act. We disagree. See *Les Halles, supra*, which vacated and remanded a Board decision finding that LE MARAIS for a restaurant in New York was geographically deceptively misdescriptive. The Federal Circuit's decision, however, clearly was based on the question whether there was a sufficient services-place association for consumers, between the New York restaurant and a neighborhood in Paris, France, and the related question whether, if such association existed, it would be material to patrons of the restaurant. The court did not question the Board's finding that the primary significance of the "Le Marais," neighborhood is that of a geographical place. See also, *In re Gale Hayman Inc.*, 15 USPQ2d 1478, 1479 (TTAB 1990) ("A geographically descriptive term can indicate any geographic location on earth, including streets and areas of cities.").

addition, applicant contends that "NoLIta" does not appear in an otherwise comprehensive on-line database of the United States Geological Survey or in geographical dictionaries.

In its request to suspend the appeal and remand the application for consideration of additional evidence, applicant contended for the first time that "Nolita" is a given name and that the term cannot, therefore, "*primarily* and directly denote a geographical place" (emphasis by applicant). In support of this contention, applicant submitted various articles retrieved from the NEXIS database and a few web pages retrieved from the Internet. Applicant has not, in either of its briefs, reiterated or in any way argued this contention.

Applicant also contends that "Little Italy" is a term used for sections of numerous cities and that the phrase "north of Little Italy" is also widely used, in discussions of these places. Thus, applicant concludes "there is no one place exclusively referred to as 'Little Italy' or 'north of Little Italy.'" Brief, p. 10. For this reason, applicant concludes that prospective purchasers of its identified goods would not make a goods-place association between the goods and the New York City neighborhood of "NoLIta." Applicant's other argument why there is no

goods-place association is based on the issuance, by the USPTO, of two registrations for, respectively, NOLITA and NO LIMITS, NO BOUNDARIES, NOLITA as marks for various hair care products, as well as the issuance of a Notice of Allowance on an intent-to-use application to register NOLITA for jewelry.⁶ Applicant has argued at length why jewelry and hair care products should be considered fashion items or trends and asserts that the USPTO's issuance of the two registrations, and the Office's approval of the application, stand as evidence that the term NOLITA is not primarily geographically misdescriptive or primarily geographically descriptive because there is no goods-place association.

Finally, applicant contends that, even if we assume that we are dealing with a geographic term for a place generally known and that prospective purchasers of the goods listed in applicant's application would associate such goods with the place named in applicant's proposed mark, there is no evidence such association will materially affect purchasing decisions. Specifically, applicant argues in its main brief that the examining attorney did

⁶ The two registrations are owned by the same entity, have virtually identical identifications of goods and list the same dates of use. The application, still pending, is owned by a different entity.

not even address the materiality issue which was highlighted by our reviewing court in the *California Innovations* case; and in its reply brief applicant deconstructs the specific items of evidence on which the examining attorney relied in her brief. Applicant asserts, in essence, that there is no direct evidence of materiality; and that any evidence asserted to establish a goods-place association does not establish such a strong association that materiality could be inferred.

Examining Attorney's Evidence

The examining attorney must establish a *prima facie* case that the mark is primarily geographically deceptively misdescriptive. See In re Pacer Technology, 338 F.3d 1348, 67 USPQ2d 1629 (Fed. Cir. 2003). A *prima facie* case "requires 'more than a mere scintilla' of evidence, in other words, 'such relevant evidence as a reasonable mind would accept as adequate to support the finding.'" In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citations omitted).

To support the initial refusal of registration, the original examining attorney introduced certain web pages and "five (5) representative Lexis/Nexis articles." The first web page is the "Nolita Neighborhood Guide" available

at "www.pleasantconcepts.com." This page says the neighborhood has boutiques and galleries, but does not specifically mention fashion or clothing items. The four boutiques and shops listed on the page include one which markets "modernized classics" but does not explain what these are, another that markets "handbags and accessories," a third that markets "handbags" and a fourth that is listed simply as a "home" boutique and which we assume would stock items for one's home. The second web page [part of the text is cut off in the printout] features a "Soho and Nolita Tour" from "Big Onion Walking Tours," and references "fashionable galleries and boutiques" but does not specifically mention clothing and, moreover, lumps the "SoHo" and "NoLiTa" neighborhoods together, so that we are unable to glean from this page whether one neighborhood or both would have the galleries and boutiques.

As for the five article excerpts retrieved by the examining attorney's LEXIS/NEXIS search for the terms "nolita" and "north little italy," these are items 1-4 and 7, of 127 articles. As noted earlier, the examining attorney terms them "representative." The first is from The Boston Globe and is an article about Boston's Italian neighborhood, the North End. The excerpt refers to New York's "NoLiTa" as "the hip boutique-laden 'hood that

translates to 'north of Little Italy.'" The second excerpt is from Real Estate Weekly which notes the appointment of a leasing agent for a retail space "in NoLita," explains that the term means "north of Little Italy" and states it is a "developing center for up-and-coming fashion retailing." It also states: "Calypso, Jamin Puech, Sigerson Morrison, Zero, Mark Schwartz, Soco, Language, and Fresh are neighborhood staples."⁷ The third article excerpt is from The New York Post, is headlined "High Fashion Is Moving Uptown," and states: "After a passing flirtation with the quaint streets of NoLita (North of Little Italy), the avant garde Commes des Garcons label headed for Chelsea and much-hyped designer boutique Jeffrey opened its headquarters in the Meatpacking District, respectively." The fourth excerpt is from The New York Law Journal and reports on the success of certain leasing agents having "arranged for Illuminations, the national lifestyles retailer, to open its first store at 54 Spring Street, in the heart of 'NoLita' (North of Little Italy)."⁸ We have no information, however, as to whether a "lifestyles retailer" is a retailer of clothing items, items for the home, or

⁷ While this particular article excerpt does not reveal the wares of each of these "neighborhood staples," other evidence reveals that these include shoe, handbag and clothing retailers.

⁸ We presume the topic is the retailer's first New York store.

something else altogether. Finally, the fifth article excerpt, from The New York Times, is on bargain hotels for frugal travelers and reports: "Trendy and desirable, the downtown neighborhoods of SoHo, NoLita (North of Little Italy) and TriBeCa have fewer hotels than other parts of Manhattan -- and almost none I could afford." These five articles are dated between May and August 2000.

The evidence offered in support of the initial refusal, by itself, likely would be insufficient to allow the examining attorney to carry the Office's burden of proof, at least in regard to the goods-place association and materiality elements of the refusal. Later submissions, however, clearly show a goods-place association between "NoLita" and fashion design and retailing. This association has been noted not only in New York publications but also in publications from other cities and on web sites geared to the fashion conscious and/or the fashion conscious prospective visitor to New York.

In support of the final refusal of registration, the original examining attorney introduced 15 additional LEXIS/NEXIS article excerpts.⁹ These are all dated between

⁹ The examining attorney stated in his office action that 14 excerpts were attached, but we count 15.

April 1997 and July 2001. The searches used to retrieve these excerpts were "nolita," or "nolita" and "north little italy," or "nolita" within five words of "north little italy," or "nolita" and "clothing." Of these 15 articles, 13 clearly discuss clothing design or retailing of clothing in "NoLita." While most of the articles appeared in New York publications, others appeared in Houston, Dallas, and San Diego publications.

Next, the original examining attorney denied applicant's request for reconsideration and introduced reprints of pages from 10 websites; a reprint of the search results list from a search of the Internet utilizing the Yahoo search engine; and 10 additional article excerpts retrieved from LEXIS/NEXIS databases. The web pages include reprints from the New York pages of "Citysearch.com" ("find cutting edge fashion in Nolita" one page states; others list numerous clothing stores); a "Visualstore.com" news article on a new shop opening in "NoLita" ("Designer Leeora Catalan, who counts Madonna, Destiny's Child, Gwen Stefani, Britney Spears and Jennifer Lopez among her celebrity clientele, has opened her own store, Shop Noir, in New York's Nolita district."); a "DigitalCity.com" listing of six of "The Best Women's Clothing Stores" in New York, which includes two stores

listed as located in "NoLita"; a web page from "onemedia.com" ("brought to you by Zagat") featuring a profile of a "NoLita" shoe store; web pages from the website of designer Margie Tsai ("MargieTsai.com") detailing that she has an "exclusive boutique" in "NoLita," that her fashions have been featured in numerous magazines and that some are also available in other stores around the country; a page from a city guide to New York from "BlackVoices.com" ("NoLita, one of Manhattan's quietest neighborhoods, also is one of its most creative - and lately its most desirable location for fledgling artists and fashion designers to launch their own businesses"); a web page from the city guide to New York by "Trendcentral" ("[NoLita] was originally an authentic Italian neighborhood, but nowadays it's full of hipsters and fashion types who live, work, eat, and shop in the neighborhood").

The LEXIS/NEXIS article excerpts included with the denial of applicant's request for reconsideration were retrieved by searches for "nolita" or "nolita" within 5 words of "clothing or fashion," and are dated between January and May 2002. Nine out of the ten articles clearly discuss clothing, clothing designers, or clothing shops in the "NoLita" neighborhood. Eight of these nine articles

appeared in New York publications, and one appeared in The Boston Globe.

The search results list from the Yahoo search *per se* is not probative. See In re Remacle, 66 USPQ2d 1222, 1223 n.2 (TTAB 2002).

The second examining attorney, following suspension of the appeal and remand of the application, issued two office actions. The first of these actions did not introduce any additional evidence in support of the refusal. The second action introduced 36 more LEXIS/NEXIS article excerpts. These are dated between March 1998 and January 2004. While the office action does not indicate the search query used to retrieve these excerpts, it appears that the search was for the term "nolita" and either "Italy" or "New York," as these are the terms that appear in bold in the excerpts. This search returned articles that appeared in New York publications, but also articles in The Chicago Tribune, Washingtonian magazine, the Providence Journal-Bulletin, The Patriot Ledger (Quincy, MA), The Times Union (Albany, New York), The San Francisco Chronicle, The Baltimore Sun, Fortune magazine, Entrepreneur magazine, The Bergen Record (New Jersey), Footwear News, and Real Estate Weekly. We agree with applicant's assessment (brief, p. 6) that these 36 excerpts have been presented in extremely truncated

fashion; and many which might otherwise have been found probative of a goods-place association merely are probative of the meaning of "NoLita." Nonetheless, 14 of the article excerpts clearly associate "NoLita" and clothing or footwear; another two associate the neighborhood with handbags; and two associate it with jewelry or "chokers."

Is the Primary Significance of the Proposed Mark a Generally Known Geographic Location?

"Under the first prong of the test - whether the mark's primary significance is a generally known geographic location - a composite mark such as the applicant's proposed mark must be evaluated as a whole. It is not erroneous, however, for the examiner to consider the significance of each element within the composite mark in the course of evaluating the mark as a whole."

In re Save Venice New York, Inc., 259 F.3d 1346, 1352, 59 USPQ2d 1778, 1782 (Fed. Cir. 2001) (citations omitted).

On the evidence of record, we find the primary significance of the proposed mark is that of a geographic location. The record includes dozens of article excerpts retrieved from the NEXIS database that show "NoLita" to be a particular place and a term derived from the phrase

"North Little Italy" or "North of Little Italy."¹⁰

Moreover, because applicant's proposed mark includes the phrase NORTH LITTLE ITALY, there is little, if any, likelihood that a consumer would perceive the NO-L-ITA element as anything other than shorthand reference for the longer phrase.¹¹

The next question is whether this geographic location is "generally known." Applicant has argued, in essence, that the "NoLIta" neighborhood certainly is not generally known outside New York City, and may not even be a widely used term within that city. On this record, however, we have no difficulty finding that the neighborhood is generally known. In New York, it would be known among real estate professionals, artists, fashion designers and those who follow the retailing of clothing and other designer items. Even outside New York City, the neighborhood and

¹⁰ Applicant and the examining attorney have debated whether it is significant that most of the evidence shows "NoLIta" is considered to be shorthand for "North of Little Italy" rather than for "North Little Italy." We find the difference insignificant, for no matter the derivation of the term "NoLIta," it identifies only one place.

¹¹ As noted previously, that although applicant at one point during prosecution of its application argued that "NoLita" can be a given name, it did not press the argument on appeal. Even had it done so, we would find the argument unavailing, both because given names are not usually hyphenated, as is the term NO-L-ITA, and also because the phrase NORTH LITTLE ITALY in the mark leaves little room for NO-L-ITA to be perceived as anything other than shorthand for the full phrase.

the items that are designed and/or retailed within the neighborhood would be generally known among those who follow the fashion industry, as well as among travel agents or travel writers who would be expected to know of the diverse neighborhoods within a particular city that travelers might want to visit; and it can scarcely be doubted that New York City is a significant tourist destination, whether for domestic or international travelers. Finally, even casual readers of newspapers from Boston, Baltimore, Chicago, Providence, Quincy (MA), Bergen (NJ), Austin, Dallas, Houston, San Diego and San Francisco, as well as casual visitors to travel-related websites featuring information on New York, may have read of the neighborhood.

Applicant's argument that New York City real estate agents "dreamed up" the name and did so only "recently" is not persuasive of a contrary result. It is largely irrelevant how the name came to be and only relevant what significance it has to consumers. Moreover, the NEXIS article excerpts show that the neighborhood has been called "NoLiTa" for years. We likewise find unpersuasive applicant's argument that the use of the name for the neighborhood is a "passing fancy" or "on the wane." This argument is based on one or two of the articles retrieved

from NEXIS and a single website visited by applicant, and is outweighed by the many other articles of recent vintage that reveal no indication that use of the name is waning.

We also find unpersuasive applicant's argument based on its submission of evidence showing the existence of other "Little Italy" neighborhoods in the United States, and the consequent use of the phrase "north of Little Italy" to describe places north of those neighborhoods. By this argument, applicant essentially contends that prospective consumers of clothing will not necessarily think of only one of these places, i.e., the New York City neighborhood, and may think of other places. This evidence, however, does not establish that any of these places are also referred to by the term NO-L-ITA. The mere possibility that a resident of, for example, San Francisco, might consider clothing marketed under applicant's mark to indicate origin of the clothing in some place north of that city's Little Italy neighborhood does not establish the registrability of applicant's mark. Rather, it only establishes that such a consumer would still misapprehend the geographic source of applicant's goods.¹²

¹² In addition, applicant has not put any evidence into the record that would tend to establish that people in other cities that have a Little Italy neighborhood are accustomed to seeing those neighborhoods designated by terms such as NO-L-ITA, whereas the record does reveal that NO-L-ITA is recognized in New York City.

In sum, as to the first factor under the California Innovations analysis, we find that NO-L-ITA and applicant's composite mark NO-L-ITA NORTH LITTLE ITALY are geographic in significance; and we find the place to which both the hyphenated term and composite mark refer is generally known.

*Is There a Goods-Place Association Between "NoLita"
and Clothing?*

The evidence submitted by the examining attorney shows that the neighborhood known as "NoLita" is associated with various things: narrow streets and smaller buildings than in nearby neighborhoods, which mean less vehicle traffic; easy pedestrian access to boutiques and specialized shops and cafes; and that the boutiques and shops may market clothing, shoes, jewelry, handbags, cosmetics, or housewares. The preponderance of the evidence, however, shows an association of the New York City neighborhood with clothing designers and retailers, many of whom apparently have found the neighborhood a suitable location for their businesses.

We find the record sufficient to establish a goods-place association between clothing items and the New York neighborhood known as "NoLita." We are not persuaded that we should reach a contrary result by applicant's argument

based on the issuance, by the USPTO, of two registrations for, respectively, NOLITA and NO LIMITS, NO BOUNDARIES, NOLITA, for various hair care products. First, applicant's argument is predicated on a finding that hair care products are "fashion items." While we do not disagree that the styling of hair may be a matter of fashion, we find no support for the contention that, for example, a hair styling gel *per se* is a fashion product. Second, even if we accepted applicant's contention that hair care products *per se* were fashion items, we would not find the Office's issuance of the two registrations in question probative that consumers would not make a goods-place association between clothing and the New York City neighborhood known as "NoLita." In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).¹³

Is it Material to Consumers that Clothing Come From or Be Designed in the "NoLita" Neighborhood of New York City?

Evidence establishing a goods-place association, as we have found to be present in this case, raises "an inference of deception based on the likelihood of a goods-place

¹³ The third-party application on which applicant relies has even less probative value than the third-party registrations. See Zappia-Paradiso, S.A. v. Cojeva Inc., 144 USPQ 101 (TTAB 1964) (Information regarding applications evidences only that they were filed on a particular date, even if the marks therein have been published for opposition).

association that [does] not reflect the actual origin of the goods. A mere inference, however, is not enough to establish the deceptiveness [and] consequence of non-registrability under ... NAFTA and the amended Lanham Act [which] place an emphasis on actual misleading of the public." *California Innovations*, 66 USPQ2d at 1857. Thus a showing of materiality is required. *Id.*

If there "is evidence that goods like applicant's or goods related to applicant's are a principal product of the geographical area named by the mark" or "the place is noted for the particular goods," deceptiveness is likely. *California Innovations*, 66 USPQ2d at 1857, citing, respectively, *In re House of Windsor*, 221 USPQ 53, 57 (TTAB 1983) and *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865, 868 n.6 (Fed. Cir. 1985).

In *California Innovations*, the appeal was limited to the USPTO's refusal to register that applicant's mark for insulated bags and wraps. While there was a great deal of evidence in the case, "[a]t best, the evidence of a connection between California and insulated bags and wraps [was] tenuous." *California Innovations*, 66 USPQ2d at 1859. Thus, the appeal was remanded to the Board for further proceedings, including review of the evidence to see if it supported a finding of materiality. *Id.*

The record in this case establishes much more than a tenuous connection between "NoLita" and clothing items. Instead, the record establishes that clothing designers are concentrated in the neighborhood and that it is known for its trend-setting and unique clothing boutiques. Some of the evidence speaks directly to consumers' recognition that "NoLita" is noted for its fashionable clothing. See, for example:

Headline: Boutiques find niche in chic kids' apparel; Buyers often are older, wealthier
"Puma shoes and Nolita T-shirts (referring to a New York City neighborhood 'north of Little Italy') have been popular with adults who are now dressing their tykes in them."
Chicago Tribune, January 26, 2004.

"...Jonsson exudes downtown chic. 'But if I want to walk around looking at things, I go east,' he said, referring to the upstart neighborhood Nolita (North of Little Italy). 'It's got more new designers. It's more fun. It's what SoHo used to be.'"
Newsday (New York, NY), February 18, 2002.

"...the area has been perceived as a destination for shoppers looking for something special that cannot be found in ordinary stores.
...fashion publications seek out the designers located there for new trends in clothing and accessories.
...Tracy Feith offers his concept of fashion to women who want to make a statement. ... '[Feith's] Customers come here for the designer look.'"
The New York Times, May 13, 2001.

Ms. Uprichard, who has been a downtown designer since the 1980's, originally selling in the East Village, said that NoLita has flourished as an alternative fashion mecca because of all the

moneyed shoppers drawn to the greater SoHo district. Another factor has been customers' hunger for clothing that is not mass marketed." The New York Times, May 31, 1998.

"...Manhattan has all the same chains,' says Barbara White-Sax, a New Jersey resident who often comes to NoLiTa to shop. 'This area truly offers things you can't find anywhere else.'" Crain's New York Business, April 21, 1997.

The record also includes an excerpt from a Washingtonian magazine article (December 2003) which, although truncated, clearly discusses the opening of high fashion shoe stores in the Washington metropolitan area, "so the hip girls will be suitably shod. Fashionable types used to shopping in New York's SoHo and NoLita won't have to make an Amtrak run anymore..."; an excerpt from Footwear News (July 28, 2003), which reports that a new boutique in Chicago is selling brands selected by, among other actions, "patrolling New York's Nolita neighborhood"; and a web site posting, by an individual reviewing the "NoLita" neighborhood (www.iagora.com's "iTravel" site; review posted by "Sacha," June 15, 2000):

Soho stands for "South of Houston," Tribeca stands for "Triangle Beneath Canal," and then there is Nolita: "North of Little Italy." Extremely cool little fashion boutiques have sprouted up in the last couple of years and so the real estate people gave it a name so as to make more money. But the area definitely is distinctive enough to merit its own name.

In sum, we find the evidence of record sufficient to establish that principal products of the "NoLita" neighborhood, and the products for which it is chiefly noted, are fashionable clothing items. Moreover, the evidence establishes that, for consumers, the origin of clothes in "NoLita" is a material factor in their shopping decisions. Thus, we find the evidence establishes the third prong of the *California Innovations* test.

Decision: The refusal of registration under Section 2(e)(3) of the Lanham Act is affirmed.

EXHIBIT F

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB

Mailed:
July 27, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Judy McCutchin
v.
Jan DuBell.

Opposition No. 91156821
to application Serial No. 78105321

Kurt Koenig of Koenig & Associates for Judy McCutchin.
Jan DuBell, pro se.

Before Hairston, Walters, and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On January 28, 2002, Jan DuBell (applicant) applied to register the mark BIG "D" REAL ESTATE (standard character form) on the Principal Register for "real estate brokerage" services in Class 36: Serial No. 78105321. The application contained a disclaimer of the term "Real Estate" and an allegation of a date of first use of May 1, 1999, and a date of first use in commerce of June 22, 2000.

On May 23, 2003, Judy McCutchin (opposer) filed a notice of opposition on the ground that the "phrase 'BIG D' is synonymous with the city of Dallas, Texas. 'BIG D' is

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commonly used and known to refer to Dallas. When 'BIG D' is used in conjunction with the remaining portion of the Mark, namely, 'REAL ESTATE,' for use on 'real estate brokerage' services, the mark is highly descriptive." Notice of Opposition at 2. Opposer further maintains that "Applicant's registration of the descriptive phrase 'BIG 'D' REAL ESTATE' is akin to the United States Patent and Trademark Office granting a monopoly in a geographic term." Id. Applicant has denied the salient allegations of the notice of opposition.

The Record

The record consists of the file of the involved application and eleven notices of reliance filed by opposer and twenty-two notices of reliance by applicant¹ concerning various printed materials from newspapers, magazines, and other sources. Applicant has also moved to strike opposer's eleven notices of reliance on numerous grounds. Regarding the second, third, and fourth notices of reliance, applicant objects on the ground that they do "not meet the procedural requirements of Rule 2.122(e)."² In her brief (unnumbered page 10), applicant argues that she "is not familiar with

¹ In an Order dated July 23, 2004 at 3, the board struck applicant's fifth, sixth, ninth, tenth, eleventh, thirteenth (except for Exhibit B), seventeenth, and twenty-second notices of reliance.

² The July 23, 2004, board order (p. 2) denied applicant's motions to strike all of opposer's notices on the ground of untimeliness.

the source, 'Nexis' articles submitted by Notice of Reliance." The TBMP (§ 704.08) provides that "[i]n lieu of the actual 'printed publication or a copy of the relevant portion thereof,' the notice of reliance may be accompanied by an electronically generated document which is the equivalent of the printed publication or relevant portion, as, for example, by a printout from the NEXIS computerized library of an article published in a newspaper or magazine of general circulation."³ Therefore, we overrule all of applicant's objections to opposer's NEXIS evidence, i.e., second, third, fourth, and sixth through eleventh notices of reliance.⁴ We add that the sixth, seventh, and eighth notices of reliance consist primarily of NEXIS printouts of wire service stories. While we will consider these wire service printouts, we give them decidedly less weight, and, in fact, we find them to be cumulative. In re Cell Therapeutics Inc., 67 USPQ2d 1795, 1798 (TTAB 2003) ([W]hile we are not saying that newswire stories are of the same probative value as are stories appearing in magazines and newspapers, we think that the situation has changed such

³ "NEXIS is a computerized database containing articles in text-only format from hundreds of periodicals spanning many years." New York Times Co. v. Tasini, 533 U.S. 383, 59 USPQ2d 1001, 1002 (2001).

⁴ Applicant's brief (unnumbered page 10) maintains that "Opposer has actually edited text in 'Nexis' articles submitted by Notice of Reliance." Applicant does not explain this point or discuss any specific examples. Inasmuch as we cannot discern any irregularities, we will consider these NEXIS printouts.

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that said newswire stories have decidedly more probative value than they did when this Board decided the Professional Tennis Council [In re Men's International Professional Tennis Council, 1 USPQ2d 1917, 1918 n.5 (TTAB 1986)] and Appetito Provisions [In re Appetito Provisions Co., 3 USPQ2d 1553, 1555 n.6 (TTAB 1987)] cases").

Applicant also objects to the documents concerning applicant's website that are included with opposer's first notice of reliance. Extracts from websites are not normally appropriate for submission by a notice of reliance. TBMP § 704.08 (2d ed. rev. 2004) ("The element of self-authentication cannot be presumed to be capable of being satisfied by information obtained and printed from the Internet"). However, there is an exception if the documents were produced in response to interrogatories or requests for admission. 37 CFR § 2.120(j)(3)(i). Opposer maintains that "the website was provided as part of the Applicant['s] Response to Interrogatories and Applicant['s] Admissions by Applicant and is admissible." Opposer's opposition to motion to strike at 3. While the website address may have been provided in response to interrogatories and requests for admissions, we note that at least some of the website printouts are dated "3/30/04 9:26 AM." Inasmuch as "Opposer's First Notice of Reliance" is dated April 9, 2004 (10 days later), it does not appear that those particular

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documents were submitted in response to a request for admissions or interrogatories. Furthermore, opposer did not comply with the provisions of Rule 120(j)(3)(i) inasmuch as she did not file a "copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for admission and any exhibit thereto ... together with the notice of reliance." Therefore, we agree with applicant that the documents in opposer's first notice of reliance are not properly authenticated and we will not consider them.

Finally, we overrule applicant's objection to the exhibits in opposer's fifth notice of reliance on the ground that they do "not meet the procedural requirements of Rule 2.122(e)." These documents were properly submitted under 37 CFR 2.120(j)(3)(i).

Standing

Applicant admits that "Judy McCutchin ('Opposer') is a licensed real estate agent only in the State of Texas. Opposer sells residential real estate in Dallas, Texas." Opposer is a competitor of applicant." TBMP § 704.06(b) (2d ed. rev. 2004). Applicant is also a real estate broker in Dallas, Texas. Opposer's Fifth Notice of Reliance, Exhibit C, Admission 10 (Applicant admitted, inter alia, that its website states that "we offer extensive [r]elocation assistance for companies and individuals locating into or

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out of Dallas. Experts in Residential and Ranch properties, we have over 20 years combined experience in Dallas real estate").

It is recognized that a party need not be a manufacturer or seller of the goods in connection with which a descriptive, misdescriptive, or merely ornamental designation is used in order to object to the registration thereof. It is sufficient that the party objecting to such registration be engaged in the manufacture and/or sale of the same or related goods and that the product in question be one that could be produced in the normal expansion of that person's business. If the designation in question is found to be merely descriptive, merely ornamental or the like, damage is presumed since a registration thereof with the statutory presumptions afforded the registration would be inconsistent with the right of another person to use these designations or designs in connection with the same or similar goods as it would have the right to do when and if it so chooses... Thus, opposer as a competitor of applicant is a proper party to challenge applicant's right of registration.

Federal Glass Co. v. Corning Glass Works, 162 USPQ 279, 282-83 (TTAB 1969). See also McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 20:11 ("Standing is presumed when the mark sought to be registered is allegedly descriptive of the goods and the opposer is one who has a sufficient interest in using the descriptive term in his business").

Inasmuch as opposer is a competitor of applicant who would have an interest in using the term "Big 'D' Real Estate," opposer has standing to oppose this application. In addition, opposer does not need to prove priority in this case because the issue is geographical descriptiveness.

Remington Products Inc. v. North American Philips Corp., 892

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F.2d 1576, 13 USPQ2d 1444, 1449 (Fed. Cir. 1990) ("There is one point on which we fully agree with the board. It appears in footnote 6 of the board opinion and reads: The emphasis each party has given to the first use of 'TRAVEL CARE' by defendant in terms of priority is not warranted. The issue here is descriptiveness ... and therefore priority of use is not an element in proving the case"). Also, opposer does not need to show it is using the mark. "It is enough to show such interest as will justify the conclusion that damage to it will ensue if the use of such term by it or its customers to describe their goods is denied." Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 805, 120 USPQ 293, 294 (CCPA 1959).

Issue

In its brief (p. 5), opposer sets out the issue as follows: "whether the mark sought to be registered, namely, 'BIG D REAL ESTATE' (with 'real estate' disclaimed) is the name of a place generally known to the public and that the public would make a services/place association." Applicant argues (Brief at unnumbered p. 10) that "'BIG D' alone has not been proven to solely denote any particular service or location."⁵ Therefore, the only question is whether

⁵ Applicant also argues (Brief at unnumbered p. 10) that she is "the exclusive user of the phrase 'BIG D' in connection with the words 'REAL ESTATE' in commerce and has acquired distinctiveness for her business name." However, applicant has not made the question of her mark's acquired distinctiveness an issue by

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applicant's mark "BIG 'D' REAL ESTATE" for real estate brokerage services "is primarily geographically descriptive" of these services. 15 U.S.C. § 1052(e)(2).

The Board has set out the following test to use in determining whether a mark is primarily geographically descriptive:

[T]he Trademark Examining Attorney would need to submit evidence to establish a public association of the goods with that place if, for example, a genuine issue is raised that (1) the place named in the mark may be so obscure or remote that purchasers would fail to recognize the term as indicating the geographical source of the goods to which the mark is applied or (2) an admitted well-recognized term may have other meanings, such that the term's geographical significance may not be the primary significance to prospective purchasers. Where, on the other hand, there is no genuine issue that the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant's own goods come from the geographical place named in the mark.

In re Handler Fenton Westerns, Inc., 214 USPQ 848, 849-50 (TTAB 1982).

We begin by noting that the evidence does not show that there is a city known officially as "Big D." Instead, the question is whether "Big D" is a nickname for Dallas, Texas, and therefore, equally primarily geographically descriptive.

In re Charles S. Loeb Pipes, Inc., 190 USPQ 238, 246 (TTAB

asserting an affirmative defense. Colonial Arms Corp. v. Trulock Firearms Inc., 5 USPQ2d 1678, 1680 n.5 (TTAB 1987). Nor was the issue tried by consent. Therefore, we will not consider this issue raised in applicant's brief.

1975) ("It is clear from the foregoing that nicknames and even abbreviations and maps of geographical areas and the names of the geographical area that they identify are, for purposes of registration, identical, and that the same criteria for registration must necessarily apply thereto").

Opposer has submitted numerous printouts to show that "Big D" is a recognized nickname for Dallas. A sample of this evidence (emphasis added) is set out below.

DALLAS IS LOW ON LIST OF 'MARKETS TO WATCH':
Even Baltimore and Philadelphia are better bets than **Big D**, if you buy the survey results. Dallas also ranks behind all the other Texas cities in the survey.
Dallas Morning News, October 26, 2001.

Big D attracts an estimated 13 million visitors annually - 40 percent of whom come for business, said Greg Elam, senior vice president of communications for the Dallas Convention and Visitors Bureau.
Dallas Morning News, June 3, 2001.

Big D used to mean Big T. During the 1970s and mid-80s, World Championship Tennis, the Virginia Slims women's tour and the Association of Tennis Players were all based in the Dallas area.
Dallas Morning News, May 6, 2001.

Dallas, as well as many other communities, followed the technology tide to become one of the nation's leading cyber cities ... The "**Big D**" did not make its paradigm shift from an energy-based economy to a technology hub without error...
Tulsa World, April 11, 2001.

Officials are extolling Dallas' cosmopolitan virtues, as well as feeding the **Big D** pop culture image with a gala dinner Monday at the Southfork Ranch Ewing Mansion.
Fort Worth Star-Telegram, March 6, 2001.

The agreement is expected to be formally announced this week, Amtrak officials said Tuesday. No start date or

ticket prices have been set for daily passenger service on the "Crescent Star" between **Big D** and the Big Apple -- the first direct service from Dallas to New York in at least 40 years.

Dallas Morning News, February 7, 2001.

Mr. Monger began buying depressed rental real estate in Dallas, where he came to visit friends. He spent his weekends in **Big D** as a "de-slum" landlord, renovating his properties.

Dallas Morning News, October 15, 2000.

With flight delays on the rise this year at large airports around the country, they and thousands of other air travelers are taking advantage of an alternate way to get in and out of **Big D**: Dallas Love Field.

Dallas Morning News, September 24, 2000.

Big game in **Big D**: Oklahoma and Texas play Saturday in Dallas, and this year's hype appears legitimate.

Daily News of Los Angeles, October 5, 2000.

Going to **Big D**: Ponciano said an agreement was reached for the Matadors to play against Division I Southern Methodist next November. SMU will pay the Matadors \$125,000 to make the trip to Dallas.

Daily News of Los Angeles, November 8, 1998.

Westwood: You should be warmly embraced in Denver. One of the city's nicknames is "D-TOWN."

Kyle Gass: Excellent. Dallas's nickname is "the **Big D**," which was nice, 'cause I'm really into O-Town right now.

Denver Westwood, April 23, 2001.

The question is whether anyone in Dallas has noticed.

Big D and environs are Cowboy country.

Denver Westwood, October 3, 1996.

In fact, prior to 2000 Dallas led the Texas film pack. That year Austin surged ahead with its best year to date behind almost \$125 million in film projects, while **Big D** had about \$89 million.

Austin American-Statesman, September 5, 2003.

Big appetites in **Big D**

Dallas Cowboy's owner Jerry Jones pitched in a recipe for salmon croquettes.

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Austin American-Statesman, January 8, 2003.

For example, Dallas is home to JC Penney and most of its advertisements are shot in **Big D**.

Austin American-Statesman, October 20, 2002.

Big trouble in **Big D** for Big Don and Little Donnie: Don Nelson still had a little of his reputation left when he arrived in Dallas, not that it lasted long. *Austin American-Statesman*, January 8, 2000.

The evidence of record establishes that Dallas is not an obscure place and that "Big D" is a common nickname for Dallas.

Furthermore, we note that much of applicant's business is conducted in the City and County of Dallas. Applicant admits that her "main office happens to be located in the Dallas, Texas metro area" and that she "is involved in the North Texas real estate market, among other places, and is a member of the Greater Dallas Board of Realtors." Applicant's Brief at 5 and 7. Applicant also responded to opposer's request for admissions as follows:

On applicant's website located at www.bigdrealestate.net, "around BIG D" is immediately followed by computer links entitled "Dallas Chamber of Commerce," "Dallas Convention & Visitors Bureau," "Locate Dallas Properties," Dallas Area Aerial Photos," "Dallas Morning News," "Dallas Photos," "Dallas Schools," "Dallas Weather," and "Texas, Our Texas."

Response: ADMIT, because Applicant's website has many resources features and links which may be of interest to those seeking applicant's services.

Opposer's Fifth Notice of Reliance, Exhibit A.

Applicant's website located at www.bigdrealestate.net features the following notation: "Big D Real Estate™ provides full coverage if the Dallas metropolitan area

and surrounding North Texas counties. We are intimately acquainted with all aspects of life in Dallas/Fort Worth and we pride ourselves in our knowledge of this thriving cosmopolitan area. At BIG D Real Estate™ we offer extensive Relocation assistance for companies and individuals relocating into or out of Dallas. Experts in Residential and Ranch properties, we have over 20 years combined experience in Dallas real estate. Let our knowledgeable BIG D™ agents help you create a worry free real estate transaction."

Response: ADMIT, because Applicant's website has many resources features and links which may be of interest to those seeking applicant's services. Applicant's website is located in the Dallas, Texas area and is included for identification purposes. The site is intended, and has resulted in business relationships all over the United States and is displayed internationally.

Opposer's Fifth Notice of Reliance, Exhibit C.

The record supports a conclusion that at least a significant portion of applicant's brokerage services are focused on and located in Dallas, Texas. A public association of the goods with the place may ordinarily be presumed from the fact that the applicant's own goods come from the geographical place named in the mark. Handler Fenton Westerns, 214 USPQ at 850. The same rule applies for services. Indeed, FOUNTAIN HILLS was held to be geographically descriptive for the real estate services located in Fountain Hills, Arizona.

If a term names an obscure or remote place, an association between the term and particular goods or services may not be made. Applicant's argument that Fountain Hills, Arizona must be widely recognized all across America in order for the refusal to register to be proper under Section 2(e)(2) is not well taken, however. Whether there is an association between the name of the place and the services is determined not in

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the abstract, but rather in connection with the services with which the mark is used, and from the perspective of the relevant public for those services. In the case at hand, the relevant purchasing public for applicant's service of developing real estate includes people considering purchasing real property in Fountain Hills, Arizona. Whether or not they presently live in Arizona, these people are aware (or will become aware) of the fact that "Fountain Hills" is the name of that place where applicant is located, that is, the town promoted by applicant as a wonderful place to buy real estate. In the context of applicant's services, the place is not obscure or remote. A clearer association between these services and this place name is difficult to imagine.

In re MCO Properties Inc., 38 USPQ2d 1154, 1156 (TTAB 1995).

Similarly, when prospective customers in Dallas, Texas, encounter "BIG D Real Estate" brokerage services an association between the services and the place name is clear.

Opposer's evidence has established its prima facie case that there is a public association of the term "Big D" with Dallas, Texas. Applicant argues (Brief at unnumbered page 7) that there "have been no formal surveys, public polls, or other professional research to determine that any percentage of the population relates the phrase 'BIG D' only to Dallas, Texas." Such evidence is not required. Accord Goodyear Tire & Rubber Co. v. Continental General Tire Inc., 70 USPQ2d 1067, 1079 n.29 (TTAB 2003) (citation omitted) ("As applicant argues, it is true that opposer has not provided survey evidence about the perceptions of ordinary consumers when faced with the term "intelligent" when used in

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connection with tires. However, evidence of the relevant public's understanding can be obtained from newspapers, magazines, trade journals and other publications without demonstrating the effect of this evidence on the consuming public. There is nothing in trademark law or practice that requires a plaintiff to offer up a survey to support an allegation of descriptiveness").

One of applicant's main arguments is that, in effect, a well-recognized term may have other meanings "such that the term's geographical significance may not be the primary significance to prospective purchasers." Handler Fenton Westerns, 214 USPQ at 850. Applicant has submitted numerous documents to show that many entities throughout the United States incorporate the term "Big D" as part of their trade or business names. See, e.g., Applicant's second notice of reliance (Kansas - Big D Oil Co., Big D Farms Inc.; Kentucky - Big D Mart Inc., Big D Mining Co. Inc.; Louisiana - Big D Farms Inc., Big D Seafood; Maine - Big D Video Plus Inc.). Applicant also identifies articles in which the term "Big D" refers to something other than Dallas. See, e.g., Applicant's eighth notice of reliance (*Neighborhood News*, November 5, 1998 - "State Rep. Margaret Long had predicted Tuesday morning that her 38th District seat in the Kansas House would continue bearing the label of a 'Big D' - for Democrat - after the votes were counted"); *New York Times*,

October 8, 2002 - "That Big D in Devils still stands for Defense").

In order for a term to be *primarily* geographically descriptive, the term does not have to be "solely geographic" as applicant suggests. Brief at unnumbered p.

7. Indeed, if that were the case, many well-known geographic locations would not be geographically descriptive. This is not what our case law holds.

Applicant urges that London is not primarily geographical because the word has other meanings and usages and because there are a number of other towns named London, but the other meanings and usages are minor and obviously derived from the geographical meaning, and the existence of other towns named London does not deprive the word of its primary geographical meaning. Applicant also urges that London is used as a surname, but this is of no moment. I do not see that there can be any reasonable argument that the word London is not primarily geographical.

In re London Gramophone Corp., 98 USPQ 362, 363 (Ex. Chief 1953). See also In re Juleigh Jeans Sportswear Inc., 24 USPQ2d 1694, 1697 (TTAB 1992) (While London has surname significance, it remains geographically descriptive); In re The Cookie Kitchen, Inc., 228 USPQ 873, 874 (TTAB 1986).

("Even if the listings it submitted are accepted as fact, all they show is that there is cocktail known as a Manhattan and that various kinds of businesses in various places incorporate "MANHATTAN" as one part of multiple-part trade names. This simply does not rebut the prima facie case made by the Examining Attorney"). Similarly, the evidence does

not convince us that the numerous references to various Big D businesses would have any substantial impact on purchasers in the United States that would detract from the Dallas, Texas significance of the term. Simple listings of Dun & Bradstreet reports and telephone books do not prove that they have much impact on prospective purchasers.⁶ Certainly, when the term "Big D" is used in association with real estate services in Dallas, Texas, we are convinced that the term would primarily geographically describe the fact that the services are rendered in Dallas.

Finally, we add that the "addition of a generic term to a geographic term does not avoid the refusal of primary geographic descriptiveness." In re Carolina Apparel, 48 USPQ2d 1542, 1543 (TTAB 1998). Here, the addition of the generic and disclaimed term, "real estate," to "Big D" used in association with real estate brokerage services does not take away the primarily geographically descriptiveness of the mark.

Decision: The opposition is sustained.

⁶ Even if some customers may believe that "the phrase 'BIG D' relates to Applicant's last name 'DuBell'" as applicant asserts in her brief (unnumbered p. 7), the term particularly in Texas would remain geographic.

EXHIBIT G

7/18/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 15
HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re BJIP, Inc.

Serial No. 75/529,080

Kathleen M. Olster of Christie, Parker & Hale, LLP for
BJIP, Inc.

Lauriel Dalier, Trademark Examining Attorney, Law Office
113 (Meryl Hershkowitz, Managing Attorney).

Before Simms, Wendel and Bottorff, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

BJIP, Inc. has filed an application to register the
mark HAVANA for "furniture, namely, dining and occasional
indoor and outdoor furniture."¹

Registration has been finally refused on the ground
that the mark is primarily geographically deceptively
misdescriptive under Section 2(e)(3). Applicant and the

¹ Serial No. 75/529,080, filed July 30, 1998, claiming a first
use date and first use in commerce date of August 11, 1997.

Ser No. 75/529,080

Examining Attorney have filed briefs, but an oral hearing was not requested.

In order to establish a prima facie case that a mark is primarily geographically deceptively misdescriptive under Section 2(e)(3) the Examining Attorney must show that the mark (1) has as its primary significance a generally known geographic place, and (2) identifies products that purchasers are likely to believe mistakenly are connected with that location, i.e., would make a goods/place association. See *In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539, 1540 (Fed. Cir. 1999); *Institut National des Appellations D'Origine v. Vinters International Co.*, 958 F.2d 1574, 22 USPQ2d 1190 (Fed. Cir. 1992). Needless to say, a preliminary requirement is that the goods with which the mark is being used do not originate from the named place.

Here the Examining Attorney maintains that the mark HAVANA is primarily geographically deceptively misdescriptive when used with applicant's furniture, which does not originate from Havana, Cuba. In support of her argument that the primary significance of the term Havana is as a generally known geographic location, the Examining Attorney has made of record a dictionary definition of

Havana as the capital and largest city of Cuba.² That applicant's goods do not originate in Havana is said to be evident not only from applicant's corporate location but also its statements concerning the U. S. trade sanctions against Cuba which would prohibit any such importation. To show that there is a "reasonable basis for concluding that there is a public association between applicant's furniture goods and the city of Havana," the Examining Attorney relies upon various excerpts from articles obtained from the Nexis database relating to the manufacture and sale of furniture in Havana. On the basis of this evidence, the Examining Attorney argues that a prima facie case has been made that applicant's mark is primarily geographically deceptively misdescriptive.

Applicant states that it does not dispute that the Examining Attorney has established that Havana is the name of a geographic location, that applicant's goods do not come from this location and that furniture is manufactured in Havana. (Reply brief, p.2). Applicant argues, however, that this is insufficient evidence to establish a prima facie case that purchasers would be likely to believe that applicant's goods originate from Havana. Applicant

² *The American Heritage Dictionary of the English Language*, 3rd ed. 1992.

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contends that the requisite goods/place association between furniture and Havana in the mind of the public has not been established.

In support of its contention, applicant points to the Board's decision in *In re Municipal Capital Markets Corp.*, 51 USPQ2d 1369 (TTAB 1999) as being definitive of the type of evidence which the Examining Attorney must present to satisfy the goods/place association requirement. In that case the applicant was seeking to register the mark COOPERSTOWN for restaurant services. The Examining Attorney had compiled a large number of extracts from newspapers and magazines showing that there were restaurants in Cooperstown. The Board held that in order to prove a goods/place association, "the Examining Attorney must present evidence that does something more than merely establish that services as ubiquitous as restaurant services are offered in the pertinent geographic location." *Id.* At 1371. The Board held that the "mere fact that restaurant services were offered in Cooperstown ... is simply not sufficient by itself to establish the requisite goods/place association." Evidence such as that showing that the location had a somewhat greater than normal number of restaurants offering a particular cuisine was suggested as a possible satisfaction of the requirement.

Applicant argues that here also the Examining Attorney is required to show something more than the mere fact that goods as ubiquitous as furniture are offered or manufactured in Havana. Applicant argues that furniture is used in every household; everyone must furnish their homes or offices; and thus every community must have a place for purchasing furniture. Based on this reasoning, applicant insists that furniture must also be considered as a ubiquitous product and that, as a result, insufficient evidence has been made of record to establish a goods/place association.

We do not find the "something more" requirement of the *Municipal Capital* case applicable here. Although furniture is found in every home or office, it does not follow that furniture is offered or manufactured in every town. While it is hard to imagine even a small town without a restaurant of some type, furniture stores are not so commonly found. Although furniture may be used in every home or office, this can not be equated with the furniture being purchased in the same locality. Clearly, the public would not be likely to view each and every city or town as a place in which furniture is produced. No parallel can be drawn between the sale and production of furniture and the offering and provision of restaurant services. Thus, we

will not hold the Examining Attorney to the stricter standard of "something more" in establishing a goods/place association when furniture products constitute the goods in issue. We find the evidence of record adequate to establish prima facie that applicant's mark is primarily geographically deceptively misdescriptive.³

Applicant further argues that even if a prima facie case has been established, applicant has rebutted this prima facie case by showing that the term "Havana" is not being used to indicate a location, but rather to evoke a "life-style" or suggest a "desirable aura" of applicant's furniture. As support for its position, applicant points to excerpted Nexis articles which the Examining Attorney has made of record, although for a different purpose. In her response to applicant's request for reconsideration the Examining Attorney introduced these articles to buttress her arguments that Havana is associated not only with furniture but a style of furniture and that, as a

³ Applicant's argument that there is a further requirement that customers will not be deceived by applicant's mark because they will not rely upon the geographic significance of the mark in deciding to buy the product is not well taken. The refusal here is under Section 2(e)(3), not 2(a). The additional requirement that the geographic misrepresentation must be material to the decision of the purchaser to buy the goods bearing the mark comes into play only in a refusal that the mark is geographically deceptive under Section 2(a). See *Institut National v. Vintners International*, *supra*; *In re Juleigh Jeans Sportswear Inc.*, 24 USPQ2d 1694 (TTAB 1992).

consequence, purchasers would be likely to believe that applicant's furniture was in fact from Havana. In a leading article we note excerpts such as the following:

... "Cuba is also well known for its colorful style and rich cultural heritage. So it's no surprise that the country has been a source of inspiration for designers and furniture manufacturers.

"In fact, I think consumers will begin to see more Cuba-inspired products, especially in home furnishings."

This trend we'll call "Old Havana Style" is taking over the country in everything from furniture to fabric to artwork.

Much of the furniture resembles European colonial or plantation-style with caning, carving and dark wood accented with decorative wrought iron. ...

... This design trend, experts agree, most likely started to emerge at the October 1998 International Home Furnishings Market with the introduction of Pennsylvania House's "Old Havana" and the "Havana" segment of Thomasville's "Ernest Hemingway" collection of furniture.

... Quintana, who is an assistant professor at Florida International University's School of Architecture in Miami, said the furniture created in Cuba was very beautiful, very useful and worth copying.

San Diego Union-Tribune (November 12, 2000)

Similar articles by the same author as published in three other newspapers were also made of record. In one of these we note the following additional discussion:

Nationally, "Havana" has become the new design buzzword. Pennsylvania House and Thomasville stamped the moniker on recent furniture lines. Scalamandre and Mulberry Home have introduced fabrics. Even

Ser No. 75/529,080

Pottery Barn featured a woven Havana trunk in its Early Fall 2000 catalog.

The Oregonian (October 14, 2000).

We agree that this evidence demonstrates that Cuba- or Havana-style furniture has become very popular in recent years in the United States. The name "Havana" or "Old Havana" has been adopted by other furniture houses in connection with certain lines of furniture, although whether it is being used as a brand name or a descriptive term is unknown. Nonetheless, we are not convinced that the evidence before us establishes other than that for which the Examining Attorney made it of record, namely that there is a distinctive type of furniture which originates in Havana and to which purchasers would be attracted for this very reason. Whether or not such a style has been copied by furniture manufacturers in the United States does not does contradict the primary significance of the term, as a geographic indication of the source of the style. We liken the situation here to that in *In re Bacardi & Co. Ltd.*, 48 USPQ2d 1031, 1034 (TTAB 1998) wherein the applicant argued that the term HAVANA, when used with rum and cocktails containing rum, evoked "an historical and stylistic image" associated with a "pre-Castro free-wheeling lifestyle." The Board held that "even if

applicant had established an association between HAVANA and a particular lifestyle, such association would not contradict the primary geographic significance of the term, as the association may be made precisely because of the primary significance of HAVANA as a city in Cuba."

Here we find the same to hold true. The primary significance of the term HAVANA is as a geographic location. The fact that a certain style of furniture is associated with this location does not detract from this primary significance but rather adds to the likelihood that purchasers would associate these goods with this location. Applicant has clearly failed to demonstrate that a domestic Havana-type of furniture has become so prevalent in the United States that purchasers would reasonably be expected to recognize that furniture of this nature was not actually produced in Havana, but rather was simply copies or U. S. renditions of a Havana-like style of furniture. See *In re Narada Productions Inc.*, 57 USPQ2d 1801 (TTAB 2001) (no evidence that there is a recognized genre or style of music known as "Cuba L.A." such that designation would be seen primarily as identifying such a style of music rather than the geographic origin of applicant's goods and services).

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The goods/place association remains strong between Havana and furniture. Accordingly, applicant has failed to rebut the prima facie case established by the Examining Attorney.

Decision: The refusal to register under Section 2(e)(3) is affirmed.

Ser No. 75/529,080

EXHIBIT H

THIS DISPOSITION IS
NOT CITABLE AS PRECEDENT
OF THE TTAB

Mailed: September 6, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Doyna, Ltd.

v.

Doyna Michigan Co.

Cancellation No. 92033012

Thomas S. Keaty and Bella I. Safro of Keaty Professional Law Corporation for Doyna, Ltd.

Doyna Michigan Co., pro se.¹

Before Seeherman, Chapman and Walsh, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Doyna, Ltd. (a New York limited liability company) has filed a petition to cancel a registration issued on the Principal Register to Doyna Michigan Co. (a Michigan

¹ On December 18, 2003, respondent filed a letter to the Board interpreted by the Board (in an order dated April 6, 2004, p. 2) as a motion to extend dates. In the letter respondent's president, Alexander Kaytser, stated that "the attorney that we have retained for this matter is unable to attend the proceedings due to other obligations." To be clear, no attorney has ever entered an appearance on respondent's behalf in this cancellation proceeding.

corporation) for the mark ZHIGULY for "beer" in International Class 32.²

Petitioner alleges, inter alia, that it "is now and has been for the last several years engaged in the business of importing and selling alcoholic and non-alcoholic beverages, including beer 'Zhigulevskojo' (Zhigulevskoye) or 'Zhiguli' for short" (paragraph 1); that petitioner "has been importing 'Zhiguli' beer from Russia, particularly 'Zhiguli' beer manufactured by Brewery Hamovniki (Khamovniki), Moscow, Russia" (paragraph 2); that 'Zhigulevskoye' beer is named for its place of origin, the town of Zhiguli in the Samara region of Russia; that 'Zhiguli' or 'Zhiguly' is a well-known mountain range along the Volga river, in Russia, and it is also the name of a region which includes the mountain range and a national park; that "the term 'Zhiguli' is a well-known geographic place" and it is a "well-known geographic place in Russia where beer is manufactured" (paragraphs 8-9); that "the term 'Zhiguli' has long been associated with Russian beer in the minds of the U.S. public" and "the term is recognized as a geographic term and as a term for Russian beer by distributors of alcoholic beverages in this country" (paragraph 16); that "purchasers of [respondent's] products would reasonably identify or

² Registration No. 2549428 issued March 19, 2002, from an application filed August 25, 2000, based on a claimed date of first use and first use in commerce of August 1, 2000.

associate the goods sold under the mark 'Zhiguli' [sic -- 'Zhiguly'] with the geographic location contained in the mark" (paragraph 23); that respondent imports and sells beer manufactured in a brewery in Lithuania; and that respondent (through an attorney) sent a letter to petitioner demanding that petitioner cease its use of the mark ZHIGULI for beer based on respondent's asserted rights in the mark ZHIGULY.

Based on these allegations, petitioner alleges that (i) respondent obtained its registration of a geographic term for its beer products contrary to the provisions of Section 2(e)(2) of the Trademark Act, 15 U.S.C. §1052(e)(2); or (ii) alternatively, the mark ZHIGULY, in relation to respondent's goods, is primarily geographically deceptively misdescriptive contrary to the provisions of Section 2(e)(3) of the Trademark Act, 15 U.S.C. §1052(e)(3); or (iii) alternatively, respondent obtained registration of a deceptive term contrary to the provisions of Section 2(a) of the Trademark Act, 15 U.S.C. §1052(a), because respondent imports and sells beer made in Lithuania under a mark which identifies a place in Russia.

In its answer respondent admits the following paragraphs of the petition to cancel:

"Petitioner has been importing 'Zhiguli' beer from Russia, particularly 'Zhiguli' beer manufactured by Brewery Hamovniki (Khamovniki), Moscow, Russia" and there is a reference to petitioner's beer label, Exhibit No. 1 (paragraph 2);

"Registrant applied for a trademark registration for 'Zhiguly' in International Class 32 on August 25, 2000, alleging the date of first use in interstate commerce of August 1, 2000. On March 25, 2002, the mark was registered on the Principal Register for beer" (paragraph 17);

"...Registrant imports and sells beer manufactured by Gubernija Brewery in the city of Shaulay, Lithuania" and there is a reference to respondent's beer label, Exhibit No. 24 (paragraph 18); and

"On May 24, 2002, Registrant, through its attorneys..., sent a letter to [petitioner], demanding that Petitioner cease and desist using the term 'Zhiguli'..." and there is a reference to a copy of the letter, Exhibit No. 25 (paragraph 24).

Respondent otherwise denies the salient allegations of the petition to cancel.

The Record

The record includes the pleadings, and particularly, the paragraphs admitted by respondent, including the exhibits mentioned therein -- copies of petitioner's beer label, respondent's beer label and respondent's cease and desist letter to petitioner (Exhibit Nos. 1, 24 and 25);³ and the file of respondent's registration as provided in

³ With one exception not relevant herein, exhibits to pleadings are not evidence of record in the case unless properly identified and introduced during testimony. See Trademark Rule 2.122(c). See also, TBMP §317 (2d ed. rev. 2004). However, the exhibits noted above (Nos. 1, 24 and 25) are of record because respondent admitted those paragraphs of the petition to cancel. In addition, we note that some of the exhibits to petitioner's

Trademark Rule 2.122(b)(1) and (2). Petitioner submitted the deposition transcript, with exhibits, of the testimony of its president and owner, Yakov Bromberg.⁴

Petitioner also submitted a notice of reliance on 17 listed items, some of which are admissible evidence and some of which are not. Petitioner noted in its brief (p. 8) that respondent "did not challenge Petitioner's evidence...." However, the adverse party is not necessarily obligated to object to evidence not submitted in accordance with the rules. A party waives its right to object only on certain matters (generally those relating to curable procedural matters). As the Board stated in *Original Appalachian Artworks Inc. v. Streeter*, 3 USPQ2d 1717, footnote 3 (TTAB 1987): "[A party] may not reasonably presume evidence is of record when that evidence was not offered in accordance with the Trademark Rules." See also, TBMP §§707.02(a) and 707.04 (2d ed. rev. 2004). In the circumstances of the case now before us, we find that respondent has not waived its objections to petitioner's involved materials. We now determine and explain seriatim the admissibility of petitioner's 17 noticed items.

Item Nos. 1-5 are copies of (i) a page from an Oxford Press map of the Volga Basin, (ii) a page from an MSN map of

pleading were later properly submitted as items in petitioner's notice of reliance, which is fully discussed later herein.

the Samara region, (iii) a page from The Columbia Gazetteer of the World (1998), (iv) a few excerpted pages from a study on "Alcohol in the USSR" (1982) published by Duke (University) Press, and (v) a few excerpted pages from The World Guide To Beer (1977). These are all printed publications properly made of record by way of notice of reliance pursuant to Trademark Rule 2.122(e).

Item No. 6 is a copy of petitioner's requests for admissions to respondent which have been deemed admitted under Fed. R. Civ. P. 36(a) as they were unanswered by respondent.⁵ This material is admissible under a notice of reliance pursuant to Trademark Rule 2.120(j)(3)(i).

Item Nos. 7-13 are photocopies of pages from Internet websites (some in English and some in Russian with a translation into English attached). As Internet materials are transitory in nature, they are not self-authenticating and therefore are not admissible under Trademark Rule 2.122(e) as printed publications. See *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370 (TTAB 1998). See also, TBMP §704.08 (2d ed. rev. 2004). Attached to the notice of reliance is the affidavit of Bella I. Safro, one of petitioner's attorneys, averring to information regarding

⁴ Respondent did not attend petitioner's deposition of Mr. Bromberg.

⁵ In addition, the Board noted in an order dated April 6, 2004 that petitioner's requests for admission were deemed admitted by operation of Rule 36(a).

Cancellation No. 92033012

the translations from Russian to English and the sources of the Internet printouts. However, the affidavit testimony of a witness is not admissible unless the parties have agreed thereto in writing pursuant to Trademark Rule 2.123(b). There is no such stipulation of the parties herein. Thus, none of the Internet evidence is admissible and cannot be considered.

Item No. 14 consists of photocopies of one-page letters from four U.S. distributors of alcoholic beverages (in California, Georgia and New York). These letters are not printed publications under Trademark Rule 2.122(e), and there is nothing in the record to indicate that respondent stipulated to the entry of such evidence. These four letters cannot be considered.

Item No. 15, the affidavit of a Russian-born person now living in Tennessee, is inadmissible for the reason explained above regarding Trademark Rule 2.123(b).

Item No. 16, a photocopy of respondent's beer label, is already of record as Exhibit No. 24 to petitioner's pleading, because it was admitted by respondent in its answer.

Item No. 17 is a copy of a letter sent by respondent to the Board during the prosecution of this cancellation proceeding. This is neither a printed publication nor an

official record under Trademark Rule 2.122(e). It cannot be considered herein.

In sum, Item Nos. 1-6, and 16 from petitioner's notice of reliance are properly of record and have been considered in reaching our decision. Item Nos. 7-15 and 17 are not properly of record and have not been considered by the Board. Of course, all evidence of record is considered only for whatever appropriate probative value it may have.

Only petitioner filed a brief on the case after trial, and neither party requested an oral hearing.

The Parties

Petitioner, Doyna Ltd., located in Brooklyn, New York, was founded in 1997 and is an importer of wine, beer and spirits from eastern European countries. Petitioner has been importing ZHIGULI beer, from Moscow, Russia, for over three years.

The information of record regarding respondent comes from its registration file; from its admissions in its answer to the petition to cancel; and from its deemed admitted answers to petitioner's requests for admission (the latter item having been made of record by petitioner). Respondent, Doyna Michigan Co., is a Michigan corporation located in Farmington Hills, Michigan. Respondent imports and sells beer manufactured by a brewery in Shaulay, Lithuania. Respondent first used the mark ZHIGULY for beer

on August 1, 2000. In May 2002, respondent sent a cease and desist letter to petitioner regarding petitioner's use of the mark ZHIGULI for beer.

Burden of Proof

In Board proceedings regarding the registrability of marks, our primary reviewing Court has held that the plaintiff must establish its pleaded case, as well as its standing, and must generally do so by a preponderance of the evidence. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1848 (Fed. Cir. 2000); and *Cerveceria Centroamericana, S.A. v. Cerveceria India Inc.*, 892 F.2d 1021, 13 USPQ2d 1307, 1309 (Fed. Cir. 1989).

Standing

Standing requires only that a party seeking cancellation of a registration have a good faith belief that it is likely to be damaged by the registration. See Section 14 of the Trademark Act, 15 U.S.C. §1064. See also, 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §20:46 (4th ed. 2005). The belief in damage can be shown by establishing a direct commercial interest.

Petitioner uses the mark ZHIGULI for beer, and respondent demanded that petitioner cease such use in a May 2002 letter from an attorney for respondent to petitioner. These facts establish petitioner's direct commercial

interest and its standing to petition to cancel. See Cunningham v. Laser Golf Corp., supra.

Pleaded Grounds

Petitioner has pleaded three grounds for cancellation -
- Section 2(a) deceptive, 15 U.S.C. §1052(a), Section 2(e)(2) primarily geographically descriptive, 15 U.S.C. §1052(e)(2), and Section 2(e)(3) primarily geographically deceptively misdescriptive, 15 U.S.C. §1052(e)(3).

We begin with a discussion of the relevant changes to the Trademark Act as a result of the North American Free Trade Agreement (NAFTA) Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (1993), and the comments of our primary reviewing Court, the Court of Appeals for the Federal Circuit, in relation thereto.

NAFTA amended Section 2(e)(2) of the Trademark Act by deleting reference to primarily geographically deceptively misdescriptive marks; adding Section 2(e)(3) to the Trademark Act to prohibit registration of primarily geographically deceptively misdescriptive marks; and amending Section 2(f) of the Trademark Act to eliminate primarily geographically deceptively misdescriptive marks from becoming registrable via a showing of acquired distinctiveness.

The Court in *In re California Innovations, Inc.*, 329 F.3d 1334, 66 USPQ2d 1853 (Fed. Cir. 2003), concluded that

the standard for determining whether a mark is primarily geographically deceptively misdescriptive under the new Section 2(e)(3) of the Act is different from, and more rigorous than, the standard for determining registrability of the same types of marks under Section 2(e)(2) of the Act prior to the NAFTA amendment. The Court stated the following (66 USPQ2d at 1856-1857, and 1858):

NAFTA and its implementing legislation obliterated the distinction between geographically deceptive marks and primarily geographically deceptively misdescriptive marks.

...

Thus, §1052 no longer treats geographically deceptively misdescriptive marks differently from geographically deceptive marks. Like geographically deceptive marks, the analysis for primarily geographically deceptively misdescriptive marks under §1052(e)(3) focuses on deception of, or fraud on, the consumer. ... Accordingly, the test for rejecting a deceptively misdescriptive mark is no longer simple lack of distinctiveness, but the higher showing of deceptiveness.

...

The amended Lanham Act gives geographically deceptively misdescriptive marks the same treatment as geographically deceptive marks under §1052(a).

...

As a result of the NAFTA changes to the Lanham Act, geographic deception is specifically dealt with in subsection (e)(3), while deception in general continues to be addressed under subsection (a). Consequently this court anticipates that the PTO will usually address geographically deceptive marks under subsection (e)(3) of the amended Lanham Act rather than subsection (a). While there are identical legal standards for deception in each section, subsection (e)(3) specifically involves deception involving geographic marks.

In view thereof, we will give no further consideration to petitioner's Section 2(a) claim, but will turn to an analysis of the Section 2(e)(3) ground.

The Court in California Innovations articulated the following standard for determining whether a mark is primarily geographically deceptively misdescriptive, Id. at 66 USPQ2d at 1858:

(1) the primary significance of the mark is a generally known geographic location, (2) the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place, and (3) the misrepresentation was a material factor in the consumer's decision.

See also, *In re Save Venice New York Inc.*, 259 F.3d 1346, 59 USPQ2d 1778 (Fed. Cir. 2001).

With regard to the first prong of the test for whether a term is primarily geographically deceptively misdescriptive, "the primary significance of the mark is a generally known geographic location," petitioner's evidence clearly shows that Zhiguly (also spelled Zhiguli)⁶ is a geographic place in Russia and is primarily known as that geographic location. Zhiguly is the name of an area in Russia on the Volga River, as well as a town in Russia, a mountain range and a national park, all in the Zhiguly region. This area is known for its natural beauty and it is

Cancellation No. 92033012

referred to as "the pearl of Russia." (Bromberg dep., pp. 11-13; and notice of reliance item Nos. 1-3.) Respondent

⁶ The word is sometimes spelled ending with an "i" and sometimes ending with a "y." The difference appears to be a difference in transliteration from the Russian alphabet.

admits that ZHIGULY is the name of a geographic region in the Volga region of Russia; and that both the city of Zhiguly and the Zhiguly National Preserve are located in Russia.

On this record, Zhiguly, Russia is not an obscure place. It is not a small region, and there are numerous geographic places named Zhiguly in the region, including a town, a mountain range and a national preserve. The first prong of the test has been met. Cf., *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); *In re Bavaria St. Pauli Brauerei AG*, 222 USPQ 926 (TTAB 1984); and *In re Brauerei Aying Franz Inselkammer KG*, 217 USPQ 73 (TTAB 1983).

Turning to whether "the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place," we find that petitioner has established this prong of the test. Beer has been produced in the Zhiguly region of Russia for over 40 years; and the Zhiguly region along the Volga River is associated with beer. "Zhiguly, or Zhigulyovskoye, it's a short name for regional place of production." (Bromberg dep., p. 12.)⁷

"The Zhiguly represent basically the traditional beer

⁷ Mr. Bromberg grew up in the Soviet Union/Russia, and it is apparent from his testimony that his English grammar is not perfect.

production [in] former Soviet Union and Russia. And it's connected to certain place in Volga region -- Zhiguly."

(Bromberg dep., p. 13.) Petitioner imports ZHIGULI beer for its "community" of Russian-speaking customers, and this community numbers about seven and one-half million people. (Bromberg dep., p. 14.)

The 1982 study "Alcohol in the USSR" published by Duke (University) Press, includes the following statements (pp. 16 and 24):

The popular Zhiguli beer containing 2.8 percent alcohol composed some 90 percent of all beer produced in 1956 ... and its dominance has probably remained.

There are eight to ten brands of beer sold in the USSR, but Zhiguli beer constituted about 90 percent of all beer sold in this period. ...

The average price of Zhiguli beer rose from 0.45 rubles in 1954 to 0.47 in 1978.

Further, The World Guide To Beer (p. 197) states: "The range includes Russia's everyday beer-brand, the light ... 'Zhiguli,' which is named after the region where the barley is grown. In the brewing of 'Zhiguli,' unmalted barley and corn-flour are used as adjuncts."

While we do not take these statements in the two publications for the truth of the matter asserted, they provide additional evidence as to the perception of the relevant consumers, the Russian-speaking community in the United States. See also, Mr. Bromberg's testimony relating to learning about Zhiguly, Russia and "Zhiguly" beer from

the time of his childhood in Russia. (Bromberg dep., p. 12.)

There is no question that respondent's beer does not come from Zhiguly, Russia or the Zhiguly region of Russia. Respondent has admitted that the beer it imports and sells under the mark ZHIGULY is produced in a brewery in Lithuania. See petitioner's notice of reliance Item No. 6 (petitioner's requests for admission, request No. 6).

As to the third prong of the test, "the misrepresentation was a material factor in the consumer's decision," the record establishes that Zhiguly, Russia is known for its beer and that the relevant public in the United States is aware of that connection. According to the record, there are seven and one-half million people in the Russian-speaking community in the United States who would purchase this beer specifically because of the geographic connotation (Bromberg dep., pp. 14 and 17). This is not an insignificant number of purchasers. That is, for at least this number of consumers the term "Zhiguly," and the belief that the beer comes from the Zhiguly region, is material to their decision to buy the product.

Accordingly, we find that petitioner has established, by a preponderance of evidence, that respondent's registered mark ZHIGULY is primarily geographically deceptively

Cancellation No. 92033012

misdescriptive in relation to respondent's beer not made in the Zhiguly region of Russia.

We have held herein that the term ZHIGULY is primarily geographically deceptively misdescriptive for beer not made in the Zhiguly region of Russia. Because respondent's beer does not come from the place named, the term cannot be primarily geographically descriptive under Section 2(e)(2) in relation to respondent's goods.

Decision: The petition to cancel is granted only on the ground of geographically deceptive misdescriptiveness, and Registration No. 2549428 will be cancelled in due course.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

The United States Playing Card Company

**v
Harbro, LLC**

DEPOSITIONS AND DEPOSITION EXHIBITS

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Deposition of
Kevin Bagger

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
 2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
 3

4 THE UNITED STATES PLAYING CARD)
 COMPANY,)

5 Opposer,)

6 vs.)

7 HARBRO, LLC,)

8 Applicant.)
 9

ORIGINAL

) Opposition No.

) 91162078

) Serial No.

) 78/253,725
 10
 11
 12
 13
 14

15 DEPOSITION OF KEVIN BAGGER

16 Taken on Friday, July 29, 2005

17 At 9:10 a.m.

18 At 2300 West Sahara Avenue, Suite 770

19 Las Vegas, Nevada
 20
 21
 22
 23
 24

25 REPORTED BY: STEPHANIE D. RUHLAND, RMR, CCR NO. 238

ASSOCIATED REPORTERS OF NEVADA
 2300 West Sahara Avenue, Suite 770
 Las Vegas, Nevada 89102 (702)382-8778

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I N D E X

Witness Page

KEVIN BAGGER

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E X H I B I T S

<u>Opposer's Exhibit No.</u>	<u>Description</u>	<u>Intro</u>	<u>Offered</u>
25	Notice of testimony deposition and subpoena duces tecum	4	
26	Las Vegas Official Visitors Guide for Winter/Spring 2005	11	
27	Las Vegas Show Guide	13	
28	Las Vegas Area Map and Visitor's Guide	15	

KEVIN BAGGER

1 *(Prior to the commencement of the*
2 *deposition, all of the parties present*
3 *agreed to waive statements by the court*
4 *reporter, pursuant to Rule 30(b)(4) of*
5 *NRCP.)*

6 *(Exhibits 25 through 28 were marked for*
7 *identification.)*

8 Thereupon--

9 KEVIN BAGGER,

10 was called as a witness, and having been first duly
11 sworn, was examined and testified as follows:

12 MS. ROESCH: Terry, I also want to tell you
13 we're marking -- I'm going to start -- unfortunately
14 I'm starting at 25 because I had all those others with
15 numbers on them that we sent to you previously.

16 MR. LINN: Okay.

17 MS. ROESCH: I'm starting with 25 for the
18 notice and subpoena, marking them together --

19 MR. LINN: Okay.

20 MS. ROESCH: -- as Opposer's Exhibit 25, and
21 I just want to state for the record that Mr. Bagger is
22 here pursuant to notice of testimony deposition and a
23 subpoena that were issued in the case the United States
24 Playing Card Company versus Harbro, LLC.

25 MR. LINN: Very good. If you could, if you

KEVIN BAGGER

1 could get the speaker a little closer to the witness.
2 I hear you just fine, Lynda. The witness is just a
3 hair quiet.

4 MS. ROESCH: I don't think he said anything
5 other than his name.

6 MR. LINN: Okay.

7 MS. ROESCH: Let's do a test though. Can you
8 state your name for the record, please.

9 THE WITNESS: Kevin Bagger. Is that loud
10 enough?

11 MS. ROESCH: Is that working?

12 MR. LINN: That's fine.

13 DIRECT EXAMINATION

14 BY MS. ROESCH:

15 Q. Kevin, can you tell us your -- where you
16 work?

17 A. I'm the director of Internet marketing and
18 research for the Las Vegas Convention and Visitors
19 Authority.

20 Q. Where is that located?

21 A. Located 3150 Paradise Road, Las Vegas,
22 Nevada.

23 Q. Can you tell us what that entity is or does?

24 A. LVCVA is the official destination marketing
25 organization for Las Vegas and the surrounding

KEVIN BAGGER

1 destinations within Clark County, Nevada. We are
2 funded by a room tax and from the dollars from the room
3 tax we generate marketing campaigns to bring visitors,
4 both convention and leisure travelers, to Las Vegas and
5 surrounding area.

6 Q. And can you -- do you mind telling us what
7 your home address is or is that a problem?

8 A. It's fine. My home address is 8681 Freeport
9 Lane, Las Vegas, Nevada, 89117.

10 Q. And how long have you lived in Las Vegas?

11 A. I've lived in Las Vegas since 1971.

12 Q. How long have you been employed with the
13 Convention and Visitors Authority?

14 A. I will have been employed there eight years
15 after next month.

16 Q. And other than the job you just told us about
17 what other positions have you held there?

18 A. I have -- when I started at the LVCVA I was
19 the senior research analyst and online marketing
20 administrator. I've since been promoted to the
21 director of both Internet marketing department and our
22 research department.

23 Q. And can you tell me what your
24 responsibilities entail in your current position?

25 A. In my current capacity I oversee all of the

KEVIN BAGGER

1 web marketing efforts of the LVCVA. I oversee the web
2 content management for our various websites and I'm
3 also -- I also oversee the market research efforts of
4 the LVCVA, our effort to understand our visitor
5 characteristics and behaviors, understand broad travel
6 trends to Las Vegas as well as to general travel
7 domestically and internationally.

8 MS. ROESCH: Terry, are you still there?

9 MR. LINN: Yes.

10 MS. ROESCH: Okay, I just had somebody check
11 to make sure.

12 BY MS. ROESCH:

13 Q. Are you also familiar with the literature and
14 promotional material that the Convention and Visitors
15 Authority puts out?

16 A. Yes, I am.

17 Q. Can you describe what Las Vegas is?

18 A. Las Vegas is one of the best known tourism
19 destinations in the world, certainly in the United
20 States. Las Vegas attracts more than 37 million
21 visitors annually. We are known domestically and
22 throughout the world among other things as the
23 entertainment capital of the world. We market Las
24 Vegas as the -- one of the if not the top tourism
25 destination in the US and in the world.

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KEVIN BAGGER

1 MS. ROESCH: Terry, you're still there?

2 MR. LINN: Yeah.

3 MS. ROESCH: Steve, are you there? We lost
4 Steve. I don't know how we kept you and lost him.

5 MR. LINN: I think that would be difficult.
6 I don't know. Maybe he stepped out to get a drink of
7 water.

8 MS. ROESCH: He called in to say he wasn't on
9 the phone.

10 MR. PUSCHNIG: How can that be?

11 MS. ROESCH: Off the record.

12 *(Off-the-record discussion.)*

13 *(The record was read back by the court*
14 *reporter.)*

15 BY MS. ROESCH:

16 Q. When you say it's the entertainment capital
17 of the world, what kind of entertainment are you
18 talking about?

19 A. Well, in our efforts to market Las Vegas,
20 entertainment means not only live entertainment in the
21 various showrooms but entertainment as a broader term
22 in terms of general vacation entertainment, whether
23 that's playing golf, whether that's going to fine
24 dining, whether that's going to spas, whether that's
25 spending time in the casinos. We market Las Vegas as

KEVIN BAGGER

1 an entertainment destination, not merely just a gaming
2 destination.

3 Q. Is Las Vegas known for the gaming it
4 features?

5 A. Certainly.

6 Q. How would you define gaming?

7 A. Gaming is legal games of chance including
8 slot machines, blackjack, craps, roulette and so forth.

9 Q. Would it include games that are played with
10 playing cards?

11 A. Yes.

12 MR. LINN: Objection. Leading. I just ask
13 the witness to make sure he waits to give me an
14 opportunity to interject my objections. I suspect
15 there will be one or two.

16 BY MS. ROESCH:

17 Q. All right. The -- are playing cards used in
18 the casinos?

19 A. Yes.

20 Q. For what purposes?

21 MR. LINN: Same objections.

22 MS. ROESCH: That's a foundational question.
23 Go ahead.

24 MR. PUSCHNIG: You can answer.

25 THE WITNESS: Yes.

KEVIN BAGGER

1 BY MS. ROESCH:

2 Q. For what purposes are playing cards used in
3 casinos?

4 A. For blackjack, pai gow poker, other card
5 games.

6 Q. How much money does the -- if you can give
7 this in a rough estimate. I'm not asking you to
8 divulge any trade secrets or any information monetarily
9 that would be a problem for you but could you give us a
10 rough estimate how much money the Visitors and
11 Convention Authority spends to promote Las Vegas?

12 A. Well, our advertising budgets hovers around,
13 most recent numbers around 75 to \$80 million, and
14 beyond that we use other monies for other marketing
15 efforts as well.

16 Q. Other than Las Vegas is there -- is the city
17 known by any other term?

18 A. Well, we -- in our marketing campaign one of
19 the current logos we use is "Only Vegas." That ties in
20 to our "What happens here stays here" advertising
21 campaign, but it's also known as Vegas as well as Las
22 Vegas.

23 Q. And how do you know that?

24 A. Personal experience, living in Las Vegas for
25 35 years, traveling, media accounts.

KEVIN BAGGER

1 MS. ROESCH: Terry, I'm going to now go to
2 what I had the court reporter mark before we started as
3 Opposer's Exhibit 26. This is the Las Vegas Convention
4 and Visitors Authority Official Visitors Guide.

5 MR. LINN: Did you provide that to us?

6 MS. ROESCH: Yes, we did. I believe you
7 actually have a color copy of it.

8 MR. LINN: Is that what you indicated is
9 Exhibit 18?

10 MS. ROESCH: Somebody might have put 18 on
11 it. I'm not sure.

12 MR. LINN: It has a cowboy on the front.

13 MS. ROESCH: No. Here is the problem.
14 That's a mix of a bunch of different brochures. You're
15 going to have to pull those apart. The one that says
16 Las Vegas Official Visitors Guide for Winter/Spring
17 2005.

18 MR. LINN: Okay. It's in that collection?

19 MS. ROESCH: It is in that collection.

20 MR. LINN: Okay.

21 MS. ROESCH: It's got like photos going down
22 the left-hand side. Is that New York New York Casino I
23 think on the front?

24 THE WITNESS: Yes.

25 MS. ROESCH: Like a picture of the Empire

KEVIN BAGGER

1 State Building or something. It says Las Vegas
2 Official Visitors Guide for Winter/Spring 2005.

3 MR. LINN: Got it. Just the front page,
4 right?

5 MS. ROESCH: There are actually two pages.

6 MR. LINN: What's the second page of the
7 document?

8 MS. ROESCH: Second page is the same. It
9 says Las Vegas and Vicinity Maps for Winter/Spring
10 2005. At the bottom it says "Only Vegas" and it's a
11 picture across the middle.

12 MR. LINN: Hold on one second.

13 MS. ROESCH: That all comes from the same.

14 MR. LINN: Is that a picture that's got the
15 Eiffel Tower in it?

16 MS. ROESCH: Yes, that's it.

17 MR. LINN: Okay. First page of the exhibit
18 has got a top of what is the Chrysler building in the
19 top corner or I mean in the middle on the right side
20 and then the second page of Exhibit 26 has got the
21 Eiffel Tower in the middle.

22 MS. ROESCH: That's right.

23 MR. LINN: Very good.

24 BY MS. ROESCH:

25 Q. I'm going to show you what we marked as

KEVIN BAGGER

1 Exhibit 26. I've got the original here. Just ask you
2 to identify that.

3 A. Yes, this is our visitors guide.

4 Q. What do you do with that visitors guide?

5 A. We send this out to interested parties who
6 call in, send request via our website and other
7 channels as a tool for planning trips to Las Vegas.

8 Q. And in the bottom right-hand corner is the
9 "Only Vegas" designation I guess I'll say. Can I ask
10 you how long you've used that?

11 A. We've used that logo for three years or more.

12 Q. Now, what does the Las Vegas Visitors Guide
13 include in it?

14 A. It includes information about the destination
15 everywhere from lodging, to maps, to attractions, to
16 activities that you can participate in while you're in
17 Las Vegas.

18 MS. ROESCH: Terry, I'm going to move on to
19 what we've marked as Exhibit 27 which is -- I'm going
20 to have you -- the easiest thing for you to do is to
21 pull out that cowgirl and cowboy and also the
22 recreational vehicle page and then what you have --

23 MR. LINN: Okay.

24 MS. ROESCH: What you have left there is 27.
25 It's not a trifold. What do you call these? It's like

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1 eight and a half by 11 and it's folded four times I
2 guess.

3 MR. LINN: Just so -- let me tell you what
4 I'm looking at. I think we may be on the same page.
5 The top sheet, upper right will have an original block
6 that says Official Guide to Entertainment and Events
7 and then on the left-hand side is a blue half and it's
8 sort of a mailer, shows the mailing thing.

9 MS. ROESCH: Right.

10 MR. LINN: Is that the first page?

11 MS. ROESCH: Yeah. Then the other part of it
12 is mostly --

13 MR. LINN: On the inside it says "Freedom to
14 see it all" on the top left and then on the right it
15 says "Contents"?

16 MS. ROESCH: Right. That's it. So that's
17 27.

18 MR. LINN: Okay. That's just those two
19 sheets of paper.

20 MS. ROESCH: Actually it's more but it's just
21 a list of hotels and everything. I'll send you the
22 rest of it. The only two things that are of real
23 interest to me are these two pages.

24 MR. LINN: Maybe we can work this out but at
25 this point I'll have to interpose an objection as to

KEVIN BAGGER

1 the remainder of this exhibit. We had agreed that the
2 exhibits would be produced or provided to us in
3 advance. I'm not saying that I won't make efforts to
4 reach agreement on this, it's just not being able to
5 see what this is it's necessary to object.

6 MS. ROESCH: All right. Your objection is
7 noted and I'm going to ask the witness to identify
8 Opposer's Exhibit 27.

9 THE WITNESS: This is the show guide mailer
10 that we send out to interested parties.

11 BY MS. ROESCH:

12 Q. The two pages that were just described
13 between myself and Mr. Linn are the pages that I marked
14 here as 27 also come from this show guide?

15 A. Yes, they do.

16 Q. Can you tell us what the show guide is?

17 A. This is similar to the official visitors
18 guide. This is a collateral piece that we provide to
19 potential visitors to help them in planning, planning
20 the shows that they want to see if and when they come
21 to Las Vegas.

22 MS. ROESCH: And then, Terry, the cowboy/
23 cowgirl is going to be marked as Opposer's Exhibit 28
24 and it's --

25 MR. LINN: Okay. Again, let me just tell you

KEVIN BAGGER

1 what I've got in front of me. Are you not going to use
2 in this exhibit the sheet that's got recreational
3 vehicles on it?

4 MS. ROESCH: The whole thing together is 28.

5 MR. LINN: Page one of 28 will say Las Vegas
6 Area Map and Visitor's Guide and it has the cowboy.

7 MS. ROESCH: Right. Middle part has the
8 recreational vehicles.

9 MR. LINN: Wait. The cowgirl is page two or
10 not?

11 MS. ROESCH: Well, it's actually -- you know,
12 they're inside and outside covers.

13 MR. LINN: Okay. It's like a long
14 rectangular piece, Las Vegas Area Map and Visitor's
15 Guide. Then there is a girl and it says "Inside" and
16 there is a table of contents.

17 MS. ROESCH: Right.

18 MR. LINN: Then there is a page with
19 recreational vehicles.

20 MS. ROESCH: Right.

21 MR. LINN: Okay.

22 BY MS. ROESCH:

23 Q. I ask the witness to identify what we've
24 marked as Opposer's Exhibit 28.

25 A. This is our area map and visitor's guide.

KEVIN BAGGER

1 Q. Okay. What is -- can you describe what this
2 is?

3 A. This is a condensed version of the official
4 visitors guide. It offers much of the same information
5 including maps to guide a visitor when they are in the
6 destination and the key difference is the size. It's
7 intended to be small to fit in the pocket of a traveler
8 while they're in their destination.

9 Q. Now, on the -- on Exhibit 28 do you use that
10 logo that we talked to you about previously?

11 A. Yes, we do.

12 Q. That is --

13 MR. LINN: Objection. Indefinite. What
14 logo?

15 MS. ROESCH: The logo being "Only Vegas."

16 THE WITNESS: Yes.

17 BY MS. ROESCH:

18 Q. And can you tell us where that is?

19 A. That we have on the back page of the fold,
20 the rear fold.

21 MS. ROESCH: Terry, just for your
22 informational purposes, that's the eight and a half by
23 11 picture of the cowboy where it says "Only Vegas" on
24 the one side.

25 MR. LINN: Got it.

KEVIN BAGGER

1 BY MS. ROESCH:

2 Q. Okay, and then can you tell us inside where
3 it is?

4 A. We also have the "Only Vegas" logo appearing
5 on page 34 of the area map and visitor's guide.

6 Q. How long has this been distributed?

7 A. I can't tell you definitive number but for
8 several years we've used the area map and visitor's
9 guide as a tool.

10 Q. Do you know how many of them you distribute a
11 year?

12 A. Thousands.

13 Q. Are you familiar with any movies that feature
14 Las Vegas?

15 A. Yeah.

16 MR. LINN: Can you repeat that question? I'm
17 sorry. You cut out.

18 BY MS. ROESCH:

19 Q. Are you familiar with any movies that feature
20 Las Vegas?

21 A. Yes.

22 Q. Which ones?

23 A. Off the top of my head I can recall Leaving
24 Las Vegas, Con Air, the movie with Nicholas Cage where
25 he gets married that I don't remember the name to. I'm

KEVIN BAGGER

1 suddenly blank but there are several.

2 Q. What about any TV shows?

3 A. Yes. There are several TV shows that feature
4 Las Vegas.

5 Q. Can you name any of them?

6 A. Las Vegas is currently on the air, Celebrity
7 Poker Showdown on the Bravo channel, CSI on CBS to name
8 a few.

9 Q. Are you familiar with a National Geographic?

10 A. National Geographic --

11 Q. Magazine.

12 A. Magazine, yes.

13 Q. Are you familiar with any awards that Las
14 Vegas may have received from National Geographic?

15 A. Not off the top of my head.

16 Q. Are you familiar with what items are
17 available for sale on casino -- I'm going to call them
18 gift shops?

19 A. In general.

20 Q. Do you know if canceled cards used at the
21 casinos are available for sale in gift shops?

22 MR. LINN: Leading. Also lack of foundation
23 as to the basis of his knowledge. Go ahead.

24 BY MS. ROESCH:

25 Q. You can answer.

KEVIN BAGGER

1 A. Okay. I have seen canceled playing cards for
2 sale in gift shops in Las Vegas hotels.

3 Q. What are canceled playing cards?

4 A. They are playing cards that are typically
5 clipped or marked in some way so they can't be used
6 again in casinos. My understanding is they had been
7 used previously in the casinos.

8 Q. You have seen those cards for sale in gift
9 shops in Las Vegas?

10 MR. LINN: Objection. Leading.

11 THE WITNESS: Yes.

12 MS. ROESCH: I don't have anything further at
13 this point.

14 MR. LINN: Give me just a minute here,
15 Mr. Bagger, and I'll collect my thoughts.

16 CROSS-EXAMINATION

17 BY MR. LINN:

18 Q. In your job responsibilities do you have
19 responsibilities for gift shops?

20 A. No.

21 Q. When did you first talk to the attorney or
22 any attorney for United States Playing Card Company?

23 A. Today.

24 Q. Okay. When was this deposition set up as far
25 as you know?

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1 A. On July 22nd.

2 Q. Other than the questioning that we've been
3 taking down, what has the attorney for US Playing Cards
4 told you or said to you about this proceeding?

5 A. Nothing.

6 Q. Am I correct that when you make reference to
7 gaming, you're referring to actually playing games?

8 A. I'm not sure what you mean by that question.

9 Q. Would it be accurate to say that when you
10 were testifying with regard to Las Vegas being known
11 for gaming, you were referring to Las Vegas being known
12 as a destination where people can go to to actually
13 play games, that's why they are traveling there?

14 A. Well, they do come here to gamble, to play
15 games and some of them indicate that is why they are
16 coming here.

17 Q. And they come for other reasons such as to go
18 to shows which Las Vegas is famous for, correct?

19 MS. ROESCH: Objection. Leading.

20 MR. LINN: This is cross-examination.

21 MS. ROESCH: I know but he is not a hostile
22 witness.

23 BY MR. LINN:

24 Q. Go ahead and answer.

25 A. Yes, people do come here to see shows as

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1 well.

2 Q. I just want to understand when you use the
3 word gaming, you're talking about people coming and
4 actually playing some type of legal games of chance?

5 A. That is part of the reason people come to Las
6 Vegas, yes.

7 Q. I just want to know when you say gaming what
8 you mean. It's playing the games?

9 A. It is part of the Las Vegas visitor
10 experience is playing games or observing people
11 gambling in the casinos.

12 Q. Okay. Is it your understanding that there
13 are no playing card manufacturers that manufacture
14 playing cards in Las Vegas?

15 MS. ROESCH: Objection. That's beyond the
16 scope of direct and there is no foundation for it
17 either.

18 BY MR. LINN:

19 Q. You can answer.

20 A. I have no knowledge about card company, who
21 creates cards, who manufactures cards.

22 Q. All right. In your work on the Internet and
23 involving Internet activities, would it be accurate to
24 say that anyone can put virtually anything they want on
25 the Internet?

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1 MS. ROESCH: Objection. Vague. Go ahead and
2 answer.

3 THE WITNESS: I am aware of the knowledge I
4 have of what I can place on websites but you can't put
5 anything on websites.

6 BY MR. LINN:

7 Q. In order to place things on the Internet is
8 there some authority or clearance agency that a company
9 has to go by in order to place any kind of advertising
10 or other materials on the Internet?

11 MS. ROESCH: Objection. It's beyond the
12 scope of direct again. Go ahead. You can answer.

13 THE WITNESS: For our websites there is no
14 third-party outside of us that dictates what goes on
15 our website.

16 BY MR. LINN:

17 Q. In terms of your activity with the convention
18 authority, are you aware that the words Las Vegas is
19 actually Spanish for the fertile plane?

20 A. My understanding is --

21 MS. ROESCH: Objection. That's beyond the
22 scope of direct but go ahead.

23 THE WITNESS: They're Spanish for the
24 meadows.

25 BY MR. LINN:

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1 Q. The meadows?

2 A. Yes.

3 Q. What does the word Vegas is your
4 understanding what it's Spanish for?

5 A. Meadows.

6 Q. Turn to Exhibit 28.

7 A. Okay.

8 Q. I'm looking at the page that says Las Vegas
9 Area Maps and Visitor's Guide and there is a cowboy on
10 it and by his elbow and there is information talking
11 about Las Vegas Convention and Visitors Authority.

12 A. Okay.

13 Q. See that? Then there is a little white
14 rectangular box and it's got some numbers in it. One
15 of them is 3/05. Is that March 2005?

16 A. Yes.

17 Q. Is that when that brochure was printed?

18 A. Yes, that's what that should indicate.

19 MR. LINN: If you hold just a minute I might
20 be done here. We'll see.

21 *(Pause in the proceedings.)*

22 BY MR. LINN:

23 Q. Mr. Bagger, in terms of your discussion
24 regarding gaming, does gaming include roulette?

25 A. Yes.

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1 Q. Does it include craps and other games
2 involving dice?

3 A. Yes.

4 Q. Does gaming include sports book?

5 A. Yes.

6 Q. Could you just tell us what a sports book is?

7 A. It's a venue at the casinos where you can
8 make wagers on sporting events.

9 Q. Sporting events are being played on
10 televisions or somehow otherwise recorded so the
11 players can follow along?

12 A. Yes.

13 Q. Does gaming also include slot machines?

14 A. Yes.

15 Q. Does gaming include keno?

16 A. Yes.

17 Q. What's keno?

18 A. Keno is a game where random numbers are
19 pulled from a device and people beforehand place bets
20 guessing what numbers are going to be pulled.

21 Q. The gaming that goes on in Las Vegas, does it
22 include all of those different type of activities,
23 namely the roulette, sports book, slot machines, keno,
24 craps and other dice games?

25 A. Yes.

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1 Q. Are you familiar with a Las Vegas, New
2 Mexico?

3 A. I'm aware there is such a city, yes.

4 Q. Hold on a minute. I'll see if I've got any
5 more here. When the convention bureau utilizes the
6 "Only Vegas" promotional campaign, do they use that
7 because the Vegas term connotes or suggests some type
8 of hip, in-the-know lifestyle, entertainment, high
9 roller type of suggestion.

10 A. The Vegas term connotes a variety of positive
11 experiences that you noted. It means a lot of things
12 to a lot of other people. Yes, we do use the term
13 Vegas as in "Only Vegas" because we believe there is a
14 lot of value in that term in our advertising.

15 MR. LINN: No further questions.

16 REDIRECT EXAMINATION

17 BY MS. ROESCH:

18 Q. Is it a reference to the geographical -- is
19 the "Only Vegas" reference to the geographical
20 location?

21 MR. LINN: Objection. Leading. Go ahead.

22 THE WITNESS: It's a reference to the
23 destination and all that it means to a potential
24 visitor.

25 BY MS. ROESCH:

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1 Q. And with respect to the questions about the
2 Internet sites, is your Internet site VisitLasVegas.com
3 accurate, to your knowledge?

4 A. Yes.

5 MS. ROESCH: That's all I have. Do you have
6 anything else?

7 MR. LINN: Give me one minute here.

8 *(Pause in the proceedings.)*

9 RECROSS-EXAMINATION

10 BY MR. LINN:

11 Q. In your last answer where you talked about
12 and all it means to the visitor, you're talking about
13 the entertainment and the, all the entertainment and
14 the golf and all these other activities that you
15 earlier referred to?

16 A. Yeah. Everything that it means, the
17 activities as well as the emotional experience that
18 they associate with Las Vegas.

19 MR. LINN: All right. No further questions.

20 THE REPORTER: Do you want a copy?

21 MS. ROESCH: We will need you to read and
22 sign.

23 MR. PUSCHNIG: Send it to me.

24 *(Thereupon, the deposition*
25 *concluded at 9:50 a.m.)*

KEVIN BAGGER

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE
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REASON

17

8

"THEIR" SHOULD READ "THE"

REASON
"THEIR" SUBJECTS
DESTINATIONS OTHER THAN
LAS VEGAS

* * * * *

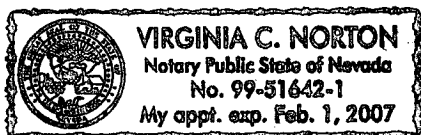
I, KEVIN BAGGER, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

~~KEVIN BAGGER~~ Deponent

STATE OF NEVADA)
COUNTY OF CLARK) SS:

Subscribed and sworn to before me this

22 day of AUGUST, 2005.



Notary Public

ASSOCIATED REPORTERS OF NEVADA
2300 West Sahara Avenue, Suite 770
Las Vegas, Nevada 89102 (702)382-8778

KEVIN BAGGER

CERTIFICATE OF REPORTER

STATE OF NEVADA)
)
COUNTY OF CLARK) ss:

I, Stephanie D. Ruhland, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the deposition of KEVIN BAGGER, commencing on Friday, July 29, 2005, at 9:10 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said stenographic notes via computer-aided transcription into written form, and that the typewritten transcript is a complete, true and accurate transcription of my said stenographic notes. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel, of any of the parties, nor a relative, employee or independent contractor of the parties involved in said action, nor a person financially interested in the action, nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 15th day of August, 2005.


STEPHANIE D. RUHLAND, RMR, CCR NO. 238

ASSOCIATED REPORTERS OF NEVADA

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Bagger Dep. Exhibit 25

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

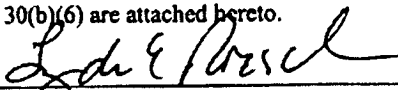
THE UNITED STATES PLAYING	::	
CARD COMPANY,	:	
Opposer,	:	Opposition No.: 91162078
v.	:	
	:	Serial No.: 78/253,725
HARBRO, LLC,	:	
Applicant.	:	

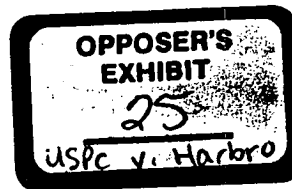
NOTICE OF TESTIMONY DEPOSITION

To: Timothy A. Flory
Van Dyke, Gardner, Linn & Burkhardt, LLP
2851 Charlevoix Drive, S.E., P.O. Box 888695
Grand Rapids, MI 49588-8695

Please take notice that The United States Playing Card Company will take in the above-entitled action, for use as authorized by the Federal Rules of Civil Procedure and the Trademark Rules of Practice, the deposition by oral examination of the Las Vegas Convention and Visitors Authority, at a conference room of Associated Reporters of Nevada, 2300 West Sahara Avenue, Suite 770, Box 17, Las Vegas, Nevada 89102 before a Notary Public to administer an oath commencing at 9:00 a.m. on the 29th day of July, 2005 and thereafter from day to day until the taking of said deposition may be adjourned. You are hereby invited to attend and cross-examine. Copies of the subpoena and the list of matters on which the deponent has been requested to testify pursuant to Federal Rule of Civil Procedure 30(b)(6) are attached hereto.

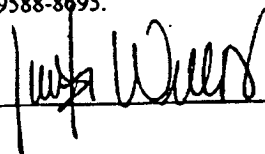
Dated: July 22, 2005


Lynda E. Roesch
DINSMORE & SHOHL LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8139-direct
(513) 977-8141-fax
lynda.roesch@dinslaw.com
Attorney for Opposer
The United States Playing Card Company



CERTIFICATE OF SERVICE

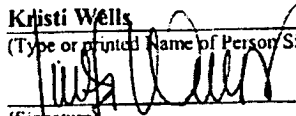
I HEREBY CERTIFY that a copy of the foregoing was sent by e-mail on this 22nd day of July, 2005 to Timothy A. Flory, Van Dyke, Gardner, Linn & Burkhart, LLP, 2851 Charlevoix Drive, S.E., P.O. Box 888695, Grand Rapids, MI 49588-8695.



CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on the date shown below.

Kristi Wells
(Type or printed Name of Person Signing Certificate)



(Signature)

July 22, 2005
(Date)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The United States Playing Card
Company

OPPOSITION NOS.: 91162078

v.

SERIAL NO.: 78/253,725

Harbro, LLC

SUBPOENA IN A CIVIL CASE

To: The Las Vegas Convention and Visitors
Authority
3150 Paradise Road
Las Vegas, NV 89109

(Subpoena Duces Tecum)

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case

PLACE OF DEPOSITION

DATE AND TIME

Conference Room

Associated Reporters of Nevada

9:00 a.m., July 29, 2005

2300 West Sahara Avenue, Suite 770

Las Vegas, Nevada 89102

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6). The matters on which examination of the organization is requested are contained in Attachment A.

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE AND TIME

Lydia E. Hirsch (ATTY for United States
Playing Card)

7.22.05
11:55 am

ISSUING OFFICERS NAME AND ADDRESS AND PHONE NUMBER

Lynda E. Roesch
Dinsmore & Shohl LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202-4797
513-977-8139

PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE
DECLARATION OF SERVER		

I declare under penalty of perjury that the foregoing information contained in the Proof of Service is true and correct.

Executed On: _____

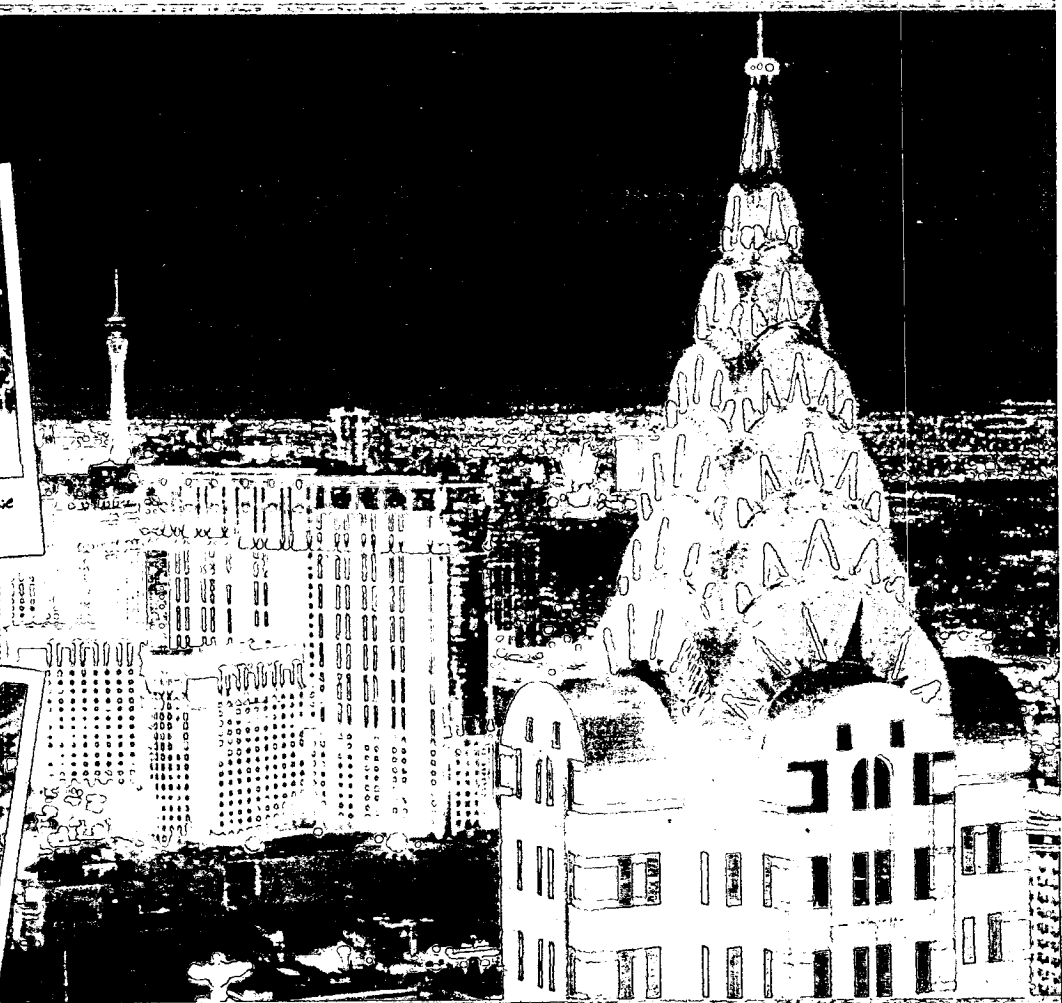
SIGNATURE OF SERVER

ADDRESS OF SERVER

ATTACHMENT A
MATTERS ON WHICH EXAMINATION IS REQUESTED

1. Las Vegas as a well-known geographical location.
2. Las Vegas is known as "Vegas."
3. Las Vegas is renowned for the gaming industry including card games.

Bagger Dep. Exhibit 26



ONLY
Vegas

CENTENNIAL CELEBRATION 1905 - 2005
100 YEARS IN NEON



Sumptuous cuisine



A chip shot for birds



4 QUEENS



So much to experience

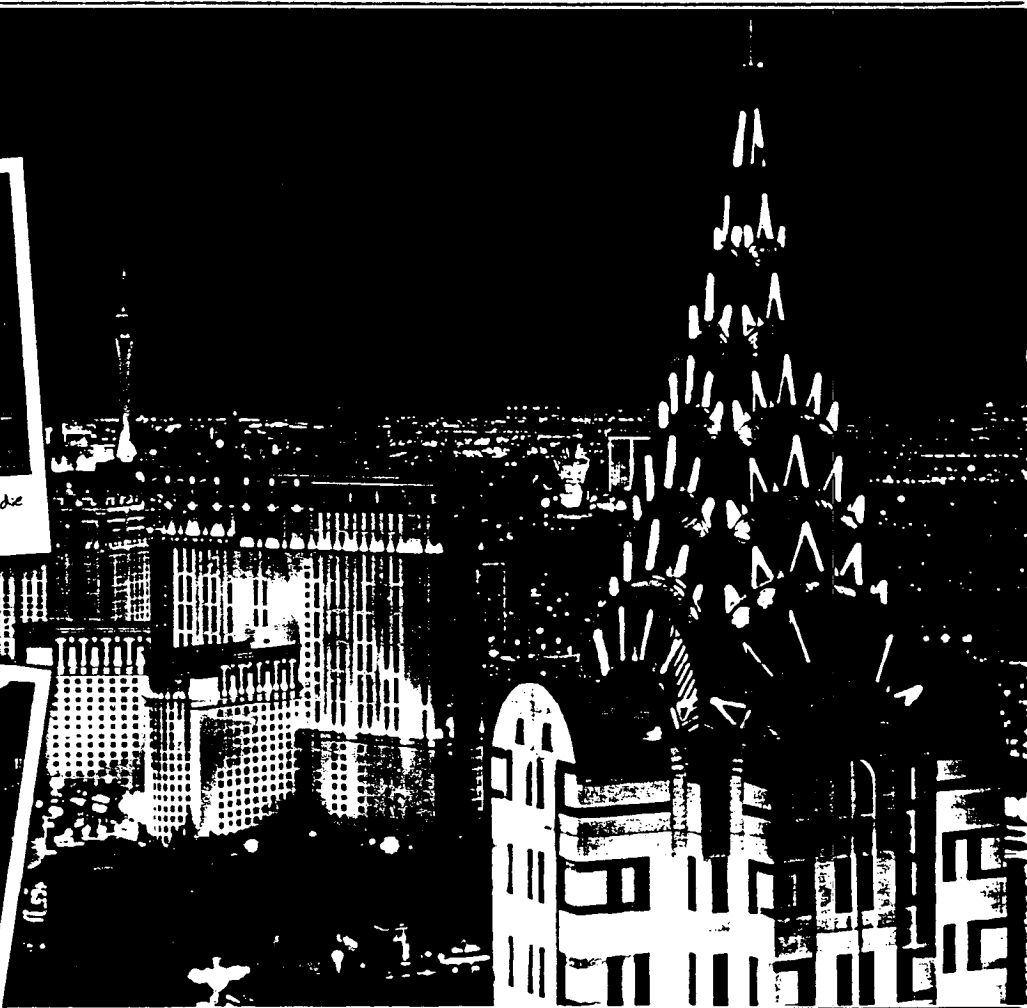


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The moment we knew we had arrived...



OPPOSER'S
EXHIBIT

26

USPC v. Harbro

Bagger Dep. Exhibit 27

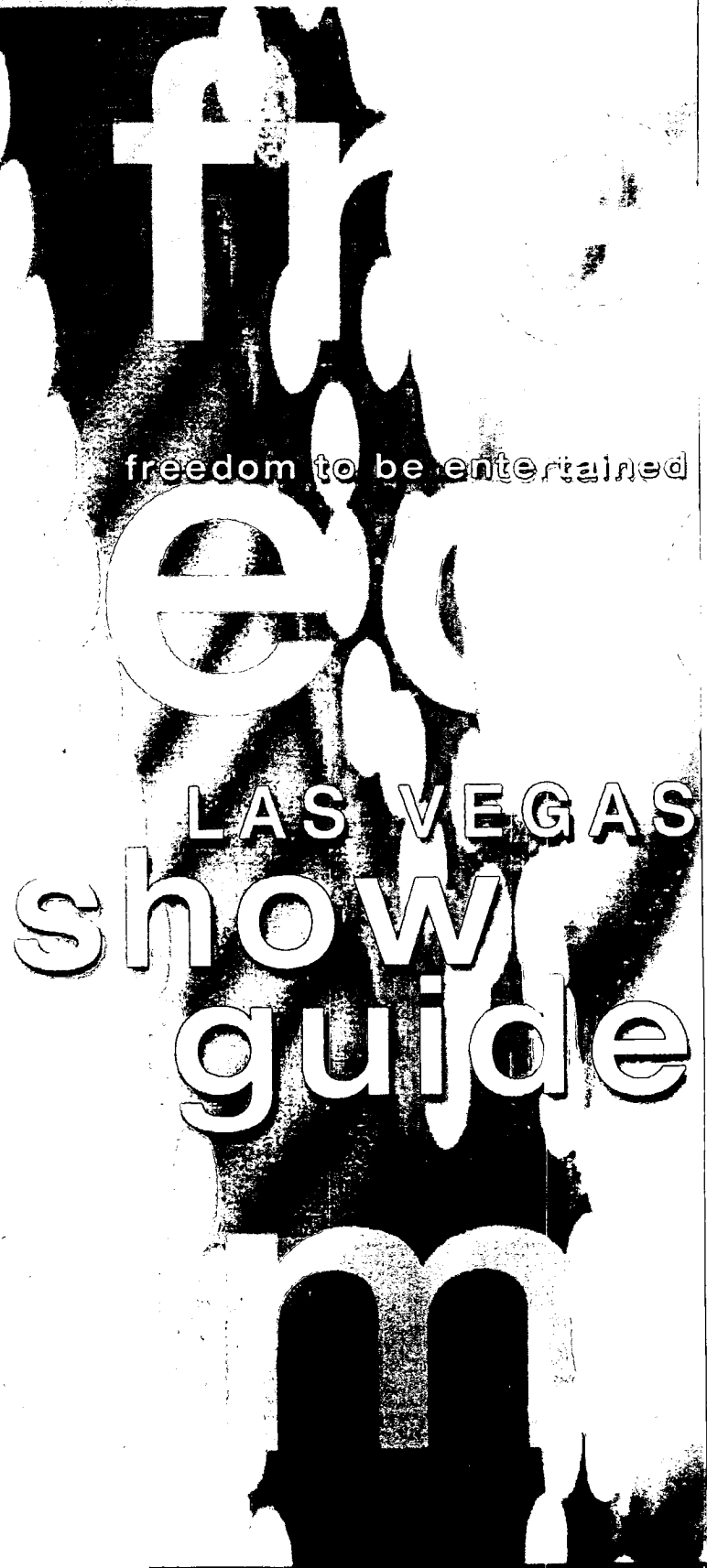
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27
USPC v. Harbo

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Bagger Dep. Exhibit 28

LAS VEGAS

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400M 3/05 #50512

OPPOSER'S
EXHIBIT
28
USCA v. Hachre

Deposition of
Daniel Espenscheid

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
 2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
 3

4 THE UNITED STATES PLAYING CARD)
 COMPANY,)

5 Opposer,)

6 vs.)

7 HARBRO, LLC,)

8 Applicant.)
 9

ORIGINAL

) Opposition No.

) 91162078

) Serial No.

) 78/253,725
)
)

10
 11
 12
 13
 14
 15 DEPOSITION OF DANIEL ESPENSCHIED

16 Taken on Friday, July 29, 2005

17 At 10:15 a.m.

18 At 2300 West Sahara Avenue, Suite 770

19 Las Vegas, Nevada
 20
 21
 22
 23
 24

25 REPORTED BY: STEPHANIE D. RUHLAND, RMR, CCR NO. 238

*ASSOCIATED REPORTERS OF NEVADA
 2300 West Sahara Avenue, Suite 770
 Las Vegas, Nevada 89102 (702)382-8778*

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I N D E X

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Recross-examination by Mr. Linn:	75

E X H I B I T S

<u>Opposer's Exhibit No.</u>	<u>Description</u>	<u>Intro</u>	<u>Offered</u>
1	Amended notice of testimony deposition	8	77
2	Photo of Las Vegas Strip	9	77
3	www.1st-las-vegas.com printout	13	77
4	www.paulsongaming.com printout	15	77
5	www.visitlasvegas.com printout	15	77
6	www.vegas.com printout	17	77
7	Vegas brand playing cards (unsealed)	22	77
8	Vegas brand playing cards (sealed)	23	77
9	Joker playing card	23	77
10	www.gamelandsports.com printout	24	77
11	vivavegas.co.uk printout	25	
12	www.thegamesaloon.com printout	25	77
13	www.oldvegaschips.com printout	27	77

E X H I B I T S

<u>Opposer's Exhibit No.</u>	<u>Description</u>	<u>Intro</u>	<u>Offered</u>
14	search.ebay.com printout	27	77
15	www.pokerchipwholesale.com printout	29	77
16	www.nationalgeographic.com printout	31	77
17	travel.discovery.com printout	31	77
18	Where magazine	32	77
19	What's On magazine	35	77
20	MGM Grand playing cards	36	77
21	Bellagio playing cards	37	77
22	Mirage playing cards	37	77
23	Suncoast playing cards	37	77
24	Mandalay Bay playing cards	37	77
25	New York New York playing cards	38	77
26	Excalibur playing cards	38	77
27	Today in Las Vegas magazine	40	77

DANIEL ESPENSCHIED

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRC.P.)

(Exhibits 1 through 26 were marked for identification.)

Thereupon--

DANIEL ESPENSCHIED,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ROESCH:

Q. Could you state your name for the record, please.

A. Daniel Fred Espenscheid.

Q. Where do you live?

A. Las Vegas, 2540 Seascapes Drive.

Q. How long have you lived in Las Vegas?

A. Approximately 12 years.

Q. By whom are you currently employed?

A. United States Playing Card Company.

Q. In what capacity?

A. I'm the casino sales manager.

Q. How long have you been in that position?

DANIEL ESPENSCHIED

1 A. In that -- I've been with the company
2 since -- as of last month, 35 years, and I've been in
3 that position 12 years since I moved out here.

4 MS. ROESCH: Terry, can you hear him okay?

5 MR. LINN: Just fine.

6 MS. ROESCH: Just wanted to make sure.

7 BY MS. ROESCH:

8 Q. How long have you been casino sales manager?

9 A. About 12 years.

10 Q. What did you do before that?

11 A. I was area manager, domestic sales with US
12 Playing Card.

13 Q. Did that have anything to do with casino
14 sales?

15 A. No.

16 Q. So casino sales manager for the last 12
17 years?

18 A. Twelve years.

19 Q. Tell me what your responsibilities are as a
20 casino sales manager.

21 A. Maintain contracts with -- we deal with
22 approximately 85 percent of the casinos in Vegas. My
23 area is Las Vegas, southern California, Arizona, New
24 Mexico. That's it. Just keeping in touch with
25 customers, customer service. We do contract

DANIEL ESPENSCHIED

1 negotiations, artwork for the cards and then I also
2 supervise the warehouse here and make sure everything
3 is shipping and delivering on time, et cetera.
4 Basically handle complaints.

5 Q. What do you mean you handle the warehouse?
6 What warehouse?

7 A. I keep in touch with it. It's actually we
8 lease space at the warehouse here.

9 Q. What is the purpose of leasing space at the
10 warehouse?

11 A. That's where we store all the casino cards
12 that we do -- all the casinos we do business with west
13 of the Mississippi are stored here in Vegas. We
14 usually keep, maintain -- we maintain about a two-month
15 supply of each casino here in Vegas.

16 Q. Who are your competitors in the playing card
17 industry? Let me just qualify that, for the casino
18 cards.

19 A. For the casino, we have about 80, 85 percent.
20 Gemaco Playing Card Company out of Missouri would be
21 the second and then GPI, Gaming Partners, Incorporated,
22 which is -- used to be Paulson. They're not really --
23 they're more of a gaming equipment manufacturer but
24 they do handle cards. They're number three.

25 Q. All right.

DANIEL ESPENSCHIED

1 MR. LINN: That was GPI, the letters GPI?

2 THE WITNESS: Gaming Partners, Incorporated.
3 Used to be Paulson Playing Cards and they were actually
4 owned by Burgoyne and Gracie out of France and they
5 bought Paulson, Bud Jones, they merged them all
6 together. It's all GPI now.

7 BY MS. ROESCH:

8 Q. I'd like you to take a look, I want to
9 reference -- we marked as Exhibit 1 the notice of
10 deposition that is directed to you. Do you see that in
11 front of you?

12 A. Yes.

13 Q. You have that, Terry?

14 MR. LINN: No, I don't but that's okay. I
15 know what it is.

16 MS. ROESCH: This is specifically the amended
17 notice of testimony deposition for Dan Espenscheid.
18 We're marking that as number one. If you flip over to
19 the next page, that's right. Terry, I believe these
20 have numbers on them. Did you get --

21 MR. LINN: Yeah, we got some with numbers, I
22 got some with a number two on it.

23 BY MS. ROESCH:

24 Q. All right. Number two should be a black and
25 white -- what looks like a black and white photograph.

DANIEL ESPENSCHIED

1 MR. LINN: Some sort of Internet printout,
2 yes. I think we're on the same page here now.

3 BY MS. ROESCH:

4 Q. All right. I hope these numbers will follow
5 but if we have a problem we'll deal with it. Okay.
6 We've marked as Opposer's Exhibit No. 2 a printout from
7 an Internet site which has a photograph. Can you
8 identify what that is?

9 A. That's the --

10 MR. LINN: Objection. Hearsay.

11 MS. ROESCH: I'm sorry, I didn't hear you,
12 Terry.

13 MR. LINN: I said objection. Hearsay.

14 MS. ROESCH: Okay.

15 MR. LINN: Just as to the way that question
16 was asked, but go ahead.

17 THE WITNESS: That's actually the south, Las
18 Vegas Strip looking south from Flamingo, the
19 intersection of Flamingo and the Las Vegas Strip going
20 down south towards -- well, you end up at Mandalay and
21 the airport is down there further south.

22 MS. ROESCH: Terry, I believe there was a
23 second page attached to this.

24 MR. LINN: There is two pages in mine,
25 two-page Internet printout.

DANIEL ESPENSCHIED

1 MS. ROESCH: Right. I really am only
2 interested in the photograph but I just wanted to --

3 MR. LINN: Yeah, I mean, I guess -- that's
4 what some of the issues may be generated relative to
5 objections and such but go ahead. I mean, the exhibit
6 that you have identified is two pages, right?

7 MS. ROESCH: Yeah, it is. I'm not really
8 interested in that second page. I just -- that's the
9 way it prints out from the Internet so I gave you the
10 complete set of it.

11 MR. LINN: Right.

12 BY MS. ROESCH:

13 Q. But so can you explain to me what the Strip
14 is?

15 A. It's the Las Vegas Strip. It's where the
16 bulk of the casinos are located, casino/hotels are
17 located in Las Vegas. Well, the bulk that the tourist
18 go to. Of course we have quite a locals population now
19 and there is quite a few in the outlying areas but this
20 is the main -- the southern part. If you look the
21 other way you would be looking at The Mirage, Caesars
22 Palace, et cetera. It's all on that one Las Vegas
23 Strip.

24 Q. Now, can you tell me -- well, you have said
25 that you are the casino sales manager. US Playing Card

DANIEL ESPENSCHIED

1 sells cards to casinos?

2 A. Yes.

3 Q. What casinos? Can you just give me a listing
4 of some of the casinos you sell cards to?

5 A. Everyone you see there in the picture
6 basically.

7 Q. Let's get the names.

8 A. Harrah's, Harrah's Las Vegas, Caesars Palace,
9 Bellagio, Mandalay Bay, MGM Grand, New York New York,
10 Monte Carlo. Going up the other way, Circus Circus,
11 The Mirage, Treasure Island, Wynn Las Vegas.

12 Q. Do you have more you want to list?

13 A. No, that gives you an idea.

14 Q. Now, how much of US Playing Cards' total
15 business is related to casino sales?

16 A. I guess maybe --

17 MR. LINN: Could I hear that question back,
18 please?

19 BY MS. ROESCH:

20 Q. How much of US Playing Cards' business is
21 related to casino sales?

22 A. Approximately 20 percent.

23 Q. And what, what brands, what kind of cards are
24 used or what kind of cards do you sell to casinos?

25 A. Casinos, the B brand, Aristocrat which is our

DANIEL ESPENSCHIED

1 second tier and then as of a year ago we've taken over
2 Kem plastic poker cards.

3 MR. LINN: What was that? Kim?

4 THE WITNESS: K-E-M, the Kem plastic poker
5 card. It's the poker card of choice for all the poker
6 rooms.

7 MR. LINN: Okay.

8 BY MS. ROESCH:

9 Q. You talked about a warehouse. Where is the
10 warehouse located?

11 A. It's in North Las Vegas on North Craig Road.
12 We actually lease space. It's actually a motor cargo
13 distribution service.

14 Q. In the course of your job do you have
15 occasion to visit the casinos?

16 A. Yes. I'm -- basically every day I'm in
17 several.

18 Q. Do you observe how cards are used in casinos?

19 A. Yes.

20 Q. How are cards used in casinos?

21 A. Well, as far as the bulk of them are on
22 blackjack, the blackjack games. That's probably
23 75 percent. Then there is carnival games which are Let
24 It Ride, all the specialty games. That's about it as
25 far as in the casino and then of course the Kem is

DANIEL ESPENSCHIED

1 used -- the Kem poker is used in the poker rooms which
2 are part of the casinos.

3 Q. Any other use of cards in casinos?

4 A. There is a secondary use where companies come
5 in, local companies come in after the cards are used,
6 they're canceled, this company will reconstitute the
7 decks and they're marked as being used and then they're
8 resold into retail and also throughout the country in
9 different retail stores.

10 Q. I want to go back to you talked about the
11 warehouse for US Playing Card Company. Do any of your
12 competitors maintain warehouses in Las Vegas?

13 A. Gemaco, no. Paulson, Paulson does, GPI.

14 Q. I want you to look at what we have marked as
15 Exhibit 3. You see that? That's a printout from the
16 Internet site 1st-las-vegas.com.

17 A. Right.

18 Q. Can you describe what's at the top of that?
19 Do you have that, Terry?

20 MR. LINN: Yeah, I just object to foundation
21 and hearsay but go ahead.

22 MS. ROESCH: Okay.

23 THE WITNESS: Just the top?

24 BY MS. ROESCH:

25 Q. What's across the top?

DANIEL ESPENSCHIED

1 A. Basically a banner head.

2 Q. What does it include?

3 A. Paris, pictures of the Paris Casino, actually
4 their main signage and then the Eiffel Tower. It has
5 cards, the flush fanned out, then the Bellagio
6 fountains are pictured there and then "Experience Las
7 Vegas" is the wording.

8 Q. At the bottom what is on that?

9 A. That's another overview.

10 MR. LINN: Objection. Foundation, hearsay.
11 Go ahead.

12 THE WITNESS: Another view of the Strip, long
13 distance picture.

14 BY MS. ROESCH:

15 Q. And can you describe the picture on the
16 second page of this printout?

17 A. It's a --

18 MR. LINN: Describe the picture?

19 MS. ROESCH: Yeah.

20 MR. LINN: Objection.

21 MS. ROESCH: I understand.

22 MR. LINN: Picture speaks for itself.

23 BY MS. ROESCH:

24 Q. Can you tell us what's in that picture?

25 A. It's just a layout, table layout.

DANIEL ESPENSCHIED

1 Q. Of what?

2 A. Poker chips, gaming chips and several cards,
3 playing cards.

4 Q. Do you know what the table is, what game
5 would be played there?

6 A. No, I can't. It's not a clear picture.

7 Q. Okay.

8 A. I would guess it to be blackjack but that's a
9 guess.

10 Q. All right. Let's go to what we marked as
11 Exhibit 4. I believe you've already talked about these
12 Gaming Partners International.

13 A. Right, that used to be the Paulson Company,
14 GPI.

15 Q. And where are their headquarters?

16 A. They're located here in Vegas, Las Vegas. I
17 can't think of the street but it's right, fairly close
18 to the Strip. Now, that's their headquarters. All
19 their manufacturing facilities are in Mexico.

20 Q. But they -- their actual corporate
21 headquarters --

22 A. Headquarters, sales offices, distribution,
23 there is a warehouse here, too.

24 Q. Then if you'll go to what we've marked as
25 Exhibit 5, this is the website from visitlasvegas.com.

DANIEL ESPENSCHIED

1 MR. LINN: Objection. Hearsay.

2 BY MS. ROESCH:

3 Q. Can you describe what we see on that first
4 page?

5 MR. LINN: Objection. Hearsay. Go ahead.

6 THE WITNESS: Another banner, another picture
7 far off of the Strip.

8 BY MS. ROESCH:

9 Q. Of the Strip?

10 A. Of the Las Vegas Strip. Looks like it's
11 looking north towards -- no, it's looking south.

12 Q. Then if you look to the second page see the
13 Poker Palace?

14 A. Yes, that's a --

15 Q. Can you describe what the Poker Palace is?

16 A. Poker Palace is a casino, it's actually --
17 it's just basically a card room. They don't have a
18 hotel connected to it. We do sell them our Kem plastic
19 playing cards. I believe they've got some blackjack
20 but it's mostly poker.

21 Q. If you look at the third page of that
22 exhibit, you see The Cannery Casino and Hotel?

23 A. Yes.

24 Q. Do they use cards there?

25 A. Yes, that's one of our accounts. It's up in

DANIEL ESPENSCHIED

1 North Las Vegas. It's a full casino/hotel. As a
2 matter of fact they're in expansion right now, adding a
3 garage. Everybody is expanding around here.

4 Q. And the Casino Royale casino, do you see that
5 one?

6 A. Yes.

7 Q. Can you tell us what that is?

8 A. That's right on the Strip across from the
9 Mirage. It's a full service casino/hotel.

10 Q. Do they use cards there?

11 A. They use our B brand.

12 Q. And the Eldorado Casino, do you see that?

13 A. Yes, that's a smaller one. There is no hotel
14 connected with that. That's in Henderson. They do use
15 our Aristocrat brand but it's strictly a casino
16 restaurant.

17 Q. Now if you'll go to Exhibit 6, this is a
18 printout from the Vegas.com site, do you see that?

19 A. Yes.

20 MR. LINN: Objection. Hearsay, lack of
21 foundation.

22 MS. ROESCH: You're objecting to the exhibit
23 I take it?

24 MR. LINN: Yes, I am.

25 MS. ROESCH: Because there was no testimony

DANIEL ESPENSCHIED

1 on it so I just wanted to make sure.

2 BY MS. ROESCH:

3 Q. Are you familiar with this site?

4 A. Yes.

5 Q. Tell me how you're familiar with it.

6 A. Well, I visit it occasionally just to keep up
7 with which casinos are doing what, et cetera.
8 Sometimes it pays when you go in and visit -- I usually
9 deal with vice presidents of casino operations and it's
10 nice to know what their casinos are doing as far as
11 promotions, et cetera.

12 Q. You see I guess it's really a photo to the
13 left, middle left side?

14 A. Right.

15 Q. What does that say?

16 A. "Dive into Vegas."

17 Q. What's at the bottom of that photo?

18 A. "Do Vegas right."

19 Q. What are the titles of the three columns at
20 the bottom?

21 A. Oh, "Vegas specials," "Vegas guide," "Vegas
22 events."

23 Q. What do you understand that to mean?

24 MR. LINN: Objection. Hearsay.

25 BY MS. ROESCH:

DANIEL ESPENSCHIED

1 Q. What do you understand "Vegas specials" to
2 mean?

3 MR. LINN: Same objection. Hearsay.

4 THE WITNESS: Basically what are being
5 offered in the hotels, the Las Vegas hotels.

6 BY MS. ROESCH:

7 Q. And the same thing with "Vegas guide," what
8 do you understand --

9 A. The same with the guide and the event.

10 MR. LINN: Objection.

11 MS. ROESCH: I can stipulate that you have a
12 continuing objection.

13 MR. LINN: Yes, please do on the hearsay and
14 lack of foundation.

15 MS. ROESCH: Okay. We'll do that. If you
16 would turn to the --

17 MR. LINN: And it's a continuing objection
18 throughout these exhibits.

19 MS. ROESCH: I understand. That's what I
20 meant.

21 MR. LINN: Okay. Thank you.

22 BY MS. ROESCH:

23 Q. The third page there under "Gambling."

24 A. "Inside gambling."

25 Q. Yeah. Do you see where it says "Poker is a

DANIEL ESPENSCHIED

1 way of life in southern Nevada"?

2 A. Yes.

3 Q. Now, you said you've been through casinos in
4 the course of your job.

5 A. Right, every day.

6 Q. Do you observe poker being played in the
7 casinos?

8 A. Yes, especially since we've -- we do own Kem
9 now which is the poker card of choice and we're
10 selling -- we're selling everyone on that list
11 except --

12 Q. You're talking about the Strip properties.

13 A. Yeah, except the Tropicana. Everyone else is
14 a customer of ours buying our Kem plastic playing
15 cards.

16 Q. To what do you attribute -- well, has poker
17 grown recently?

18 A. It's been, just in the last two years it's
19 been phenomenal growth. I guess partly due to the
20 deluge.

21 MR. LINN: Objection. Lack of foundation and
22 not responsive.

23 MS. ROESCH: Not responsive is my objection,
24 not yours, but go ahead.

25 MR. LINN: Well, it's nonresponsive I'm

DANIEL ESPENSCHIED

1 objecting. He is just sitting there talking about
2 something that you've never asked him about.

3 MS. ROESCH: I just asked him if there has
4 been a growth. Now I'm asking why.

5 MR. LINN: Well, he jumped ahead of your why.

6 MS. ROESCH: It's up to me whether it's
7 responsive or not. So go ahead.

8 MR. LINN: I'm going to interpose an
9 objection. If he is just having a dictation of
10 whatever thoughts are coming to his head, we can't keep
11 the question and answer format and it makes it
12 difficult for me to interpose objections to the
13 particular questions being asked. That's all.

14 THE WITNESS: The growth is rampant.

15 BY MS. ROESCH:

16 Q. Tell us about the growth.

17 A. Why?

18 Q. Yes.

19 A. Good portion is because of the TV coverage.

20 Q. Of what?

21 A. Of poker tournaments and poker games. Travel
22 station, A and E, quite a few of the TV stations,
23 that's about all you see now are poker games. Then the
24 Internet, there is poker games played on the Internet.

25 Q. Are the poker games that are featured on TV,

DANIEL ESPENSCHIED

1 where do those originate from?

2 MR. LINN: Objection. Lack of foundation.

3 THE WITNESS: Different casinos.

4 BY MS. ROESCH:

5 Q. Different casinos in Las Vegas or where?

6 A. Everywhere, everywhere, Las Vegas, Atlantic
7 City, anywhere there is gambling casinos.

8 MS. ROESCH: Let's go to -- now, Terry,
9 Exhibit 7 is the actual deck of cards from your client.

10 MR. LINN: I have photocopies so I think I
11 can track it.

12 BY MS. ROESCH:

13 Q. Okay. This is number 7. Opposer's Exhibit
14 No. 7 is a deck of cards with the seal broken. We've
15 opened these cards up just so you know. I'll ask you
16 to identify Exhibit 7.

17 A. It is a Vegas brand playing card.

18 Q. Do you know who makes that?

19 A. Harbro Company.

20 Q. Can you tell us where it's made? Does it say
21 anywhere on that?

22 A. The cards are printed in China, they're made
23 on paper from Germany and the codings actually are from
24 US.

25 Q. Where is Harbro located?

DANIEL ESPENSCHIED

1 A. In Brighton, Michigan.

2 MS. ROESCH: Move on to Exhibit 8 which,
3 Terry, is a sealed package.

4 MR. LINN: Okay. I've got color copies.

5 BY MS. ROESCH:

6 Q. Can you describe what the difference is
7 between Exhibit 7 and Exhibit 8?

8 A. It's the same tuck box but it's cello wrapped
9 with a rack tab attached to be hung up on a store peg.

10 Q. Now, are these cards, either 7 or 8, used in
11 casinos as you've seen them?

12 A. No.

13 Q. How do you know that?

14 A. In the casinos I deal with they haven't been,
15 I haven't seen these in casinos.

16 Q. I'm going to ask you to look at Exhibit 9.
17 Flip over to 9. That's 9. Terry, Exhibit 9 is the
18 actual card.

19 MR. LINN: I have a color photocopy.

20 BY MS. ROESCH:

21 Q. Okay. Can you just tell me what Exhibit 9
22 is?

23 A. It's a back -- shot of the back of the card
24 in red and it has a double ended V, double ended
25 meaning that's what we say in the jargon.

DANIEL ESPENSCHIED

1 Q. Why would -- what does double ended mean --

2 A. Basically.

3 Q. -- to you?

4 A. Basically it's really used in the casinos.
5 When the dealer is dealing the cards with a logo at
6 both ends it doesn't -- it keeps them from false
7 shuffles, false deals, and the security cameras in the
8 ceiling will see if they are doing that when the logo
9 is exposed if they're dealing seconds, et cetera. It's
10 a security feature.

11 Q. Have you ever seen that double logo used on
12 cards that were not used in casinos?

13 A. No. It's generally a security feature used
14 for casinos.

15 Q. Let's move on to Exhibit 10. Can you tell me
16 what Exhibit 10 is?

17 A. It's another Internet printout from Gameland
18 Sports.

19 Q. Can you describe the photograph there?

20 A. It pictures specialty decks for Las Vegas
21 saying "Welcome to Las Vegas, Nevada." And then one
22 says "Playing cards," "Welcome to fabulous Las Vegas,
23 Nevada, playing cards, high quality, professional
24 finish." These are --

25 Q. Have you ever seen these cards for sale

DANIEL ESPENSCHIED

1 anywhere?

2 A. Not exactly this one. I did see some in gift
3 shops. There is gift shops throughout Vegas that sell.
4 These are basically for the tourist trade, not to be
5 used in casinos.

6 Q. Now if you'll -- I'm going to skip over
7 what's been marked as 11, I believe. I'm going to skip
8 11, Terry, and go to 12.

9 MR. LINN: All right.

10 BY MS. ROESCH:

11 Q. Can you tell us what 12 is, Opposer's
12 Exhibit 12?

13 A. It's a printout called thegamesaloon.com,
14 another Internet site. They sell playing cards,
15 accessories, actual casino playing cards, old west faro
16 cards, wood card cases, et cetera, Las Vegas casino
17 playing cards.

18 Q. Now, have you visited casino gift shops?

19 A. Yes.

20 Q. And are the cards that we're talking about on
21 this Internet site the cards that are available for
22 sale at the casino gift shops?

23 A. Yes.

24 MR. LINN: Can I have that question back? I
25 had trouble following it. Say it again.

DANIEL ESPENSCHIED

(The record was read back by the court reporter.)

1
2
3 BY MS. ROESCH:

4 Q. What is the market for these used casino
5 cards?

6 A. It's a very profitable market. For
7 instance -- well, just as an example, we'll sell a deck
8 of logo'd cards to casino for like a dollar. They'll
9 use it on the tables, then this TJ Wholesale or whoever
10 comes in and cancels and reconstitutes the deck to be
11 sold in retail and they'll sell them for 2.99. It's
12 quite a profitable market.

13 Q. Just out of curiosity, do you know about how
14 many casinos there are in Las Vegas?

15 A. I'd be guessing. I think there is like 350
16 in the country. We have at least a hundred.

17 Q. Going back to Exhibit 12, what -- there is a
18 list of casinos there.

19 A. Right.

20 Q. Can you tell us does US Playing Cards sell
21 cards to any of those casinos?

22 A. We sell to all of them except the Sahara,
23 Hard Rock and the Tropicana on that one list.

24 Q. Can you read off the list who they do sell
25 to?

DANIEL ESPENSCHIED

1 A. We sell to the Flamingo, Monte Carlo,
2 Bellagio, Mirage, New York New York, Mandalay Bay, Rio
3 Suites.

4 Q. All right. Go to Exhibit 13 now. Can you
5 tell me what that is?

6 A. It's another website, "Welcome to Pete and
7 Chantal Rizzo's Las Vegas Casino Chips and Poker Chips
8 Website." Is a picture of the logo sign on the top.

9 Q. I'll direct your attention to the second
10 page. What kind of cards are they selling here?

11 A. These are all -- Kem cards is one of our
12 product. It's the poker cards. "Our World Famous Las
13 Vegas Casino," that's the chip museum, attractions.
14 The only thing on that page is the Kem cards that are
15 playing cards. Wait a minute. "Las Vegas Casino
16 Decks," yes.

17 Q. When you read "Las Vegas Casino Decks of
18 Playing Cards," what does that mean to you?

19 A. That would be our customized casino playing
20 cards.

21 Q. Okay. I'd like you to go to what is marked
22 as Exhibit 14. Can you tell me what that is?

23 A. This is the eBay Internet site.

24 Q. Are you familiar with what eBay is?

25 A. Yes.

DANIEL ESPENSCHIED

1 Q. What is eBay?

2 A. It's where you can go on the Internet and buy
3 and sell. A lot of people make their living from that.
4 I don't participate in it.

5 Q. But are you aware if they actually sell, buy
6 or sell playing cards on eBay?

7 A. Yes.

8 Q. How do you know that?

9 A. I've just -- I have some friends that have
10 been doing that.

11 MR. LINN: Double hearsay. I'm going to
12 throw in that extra objection even though I've got a
13 continuing hearsay objection. Go ahead.

14 BY MS. ROESCH:

15 Q. Are you aware of the actual eBay site selling
16 cards?

17 A. I have been, yeah. As I said I never
18 participated in it. I've never been on the site
19 myself.

20 Q. You haven't actually been to the site?

21 A. No.

22 Q. But you did understand that eBay sells cards?

23 A. Yes.

24 MR. LINN: I'm sorry, I'm going to object as
25 leading. Go ahead.

DANIEL ESPENSCHIED

1 BY MS. ROESCH:

2 Q. How do you know eBay was selling the cards?

3 A. Well, through friends telling me. They
4 mentioned the fact that they saw some of our brands
5 that we sell to the casinos on the Internet site. I've
6 never been on it myself.

7 Q. All right. Let's go to Exhibit 15. Can you
8 tell me what 15 is?

9 A. It's another Internet site, Pokerchip
10 Wholesale.

11 Q. Can you tell me what the article for sale is
12 here?

13 A. It's the B brand, the Treasure Island
14 customized B brand card that we manufacture.

15 Q. Is this an original set?

16 A. It's used.

17 Q. And what casino is this from?

18 A. Treasure Island which is now actually called
19 TI.

20 Q. Hold on a second while I'm looking. This is
21 a collection of -- keep going.

22 MR. LINN: I'm sorry, what are you talking
23 about? Exhibit 15 or something else?

24 MS. ROESCH: No, Exhibit 15, I just wanted,
25 Terry, you to know that there are -- keep going.

DANIEL ESPENSCHIED

1 Identify each casino card that's available on this
2 collection.

3 MR. LINN: Objection. Leading.

4 MS. ROESCH: Okay.

5 MR. LINN: He explained that this exhibit is
6 a collection of different materials or that the one
7 thing shows different cards. I'd like to hear what the
8 witness has to say rather than --

9 THE WITNESS: It's the same Internet site but
10 it's selling different brands, different casinos'
11 playing cards. They're all our brands but they're from
12 different casinos.

13 BY MS. ROESCH:

14 Q. Identify which -- there are actually -- I
15 collected in one exhibit four different pictures
16 basically. So explain what those are.

17 A. The first one that we discussed earlier was
18 Treasure Island which is our B brand. The second is
19 Palms, Palms Casino using our Aristocrat brand with the
20 custom Palms logo. The third is The Mirage using our B
21 brand with the customized Mirage logo, and the fourth
22 is Bellagio using our B brand with the customized logo,
23 Bellagio logo.

24 Q. In each instance can you tell us are these
25 new cards?

DANIEL ESPENSCHIED

1 A. These are all used.

2 Q. When you say used, what do you mean?

3 A. They've been used at the casino, they're
4 canceled and then reconstituted and resold. Now that I
5 see what they're selling them for I'm in the wrong end
6 of the business.

7 Q. Let's go to Exhibit 16. Are you familiar
8 with the magazine National Geographic?

9 A. Yes.

10 Q. Are you aware of any awards that the City
11 might have gotten from -- or honor maybe is a better
12 word -- from National Geographic?

13 MR. LINN: Are you talking about his company
14 receiving awards? I'm sorry, say that again.

15 MS. ROESCH: I'm saying is he aware of the
16 City getting any kind of award or honor from National
17 Geographic.

18 MR. LINN: I've got my continuing objection.

19 MS. ROESCH: Okay.

20 THE WITNESS: Yes, they did.

21 BY MS. ROESCH:

22 Q. What are you aware?

23 A. They do rank. They rank cities. I believe
24 they were ranked in the top 50 places I believe it was.

25 Q. I'd like you to go to Exhibit 17. Tell me

DANIEL ESPENSCHIED

1 what that is.

2 A. It's another Internet printout from the
3 Travel Channel.

4 Q. What's this printout of?

5 A. It's of Las Vegas. It's a Travel Channel
6 feature "Viva Las Vegas" and it gives a review of
7 what's happening and the shows, et cetera, Vegas
8 secrets, Vegas photos, also the World Poker Tour which
9 is one of the -- I mentioned earlier that poker is
10 popular because of -- one of the reasons is because of
11 the Travel Channel using -- broadcasting a lot of the
12 poker tours.

13 Q. Who makes cards for the World Poker Tour?

14 A. We do. WPT, World Poker Tour. They use our
15 Kem brand.

16 MS. ROESCH: I want to go -- Terry, I don't
17 think these were actually marked when we sent these to
18 you. It's the magazine that has Dennis Miller's
19 picture on it.

20 MR. LINN: Okay.

21 BY MS. ROESCH:

22 Q. That's marked as 18. Can you tell me what
23 Exhibit 18 is?

24 A. It's the magazine Las Vegas Where and it's a
25 magazine. Actually it's a free magazine that is

DANIEL ESPENSCHIED

1 published I believe it's monthly and you can pick them
2 up in any of the casinos, hotels, gift shops around
3 town. This one is July 2005.

4 Q. Where did this one come from?

5 A. I believe I picked this up -- I picked it up,
6 I can't recall the casino but I did pick it up in a
7 casino.

8 Q. If you'll look at what's page one, you see
9 under number four "Here and Now"?

10 A. Yes, number four, "Here and Now, Vegas
11 swimming pools go Euro."

12 Q. Under page 48, can you tell us what that
13 says?

14 A. Forty-eight.

15 MR. LINN: Hold on. Let me get on the right
16 page with you. Go ahead.

17 THE WITNESS: Where is 48?

18 BY MS. ROESCH:

19 Q. No, not page 48. I'm sorry. It's on the
20 table of contents next to page 48.

21 A. Forty-eight, "Parting Shot, Watch Vegas light
22 up this Independence Day."

23 Q. Going to page 11 of the magazine.

24 A. It's an article about Dennis Miller and it's
25 "The observational comedian takes observation of

DANIEL ESPENSCHIED

1 Vegas."

2 Q. Can you turn to the next page?

3 A. It's a --

4 Q. Are you familiar with this?

5 A. Mama Mia is a show that is at the Mandalay
6 Bay. It's a very good show. This is an ad from the
7 Where magazine and it shows it's the number one show in
8 Vegas according to the Las Vegas Review Journal which
9 is the local paper.

10 Q. Turning to the next page which is page 27.
11 Ask you to look at the ad in the upper left-hand
12 corner.

13 A. It's an ad for Smith and Wollensky which is a
14 local steak house. It says, "The only sure thing in
15 Vegas is Smith and Wollensky."

16 Q. Then if you look at the last page which is
17 page 48.

18 A. Where is it?

19 Q. I'm sorry, the second last page, can you tell
20 us what's on there?

21 A. Oh, page 42.

22 Q. Right.

23 A. It's an article about Lake Las Vegas saying
24 it is a Vegas oasis.

25 Q. Then finally on page 48.

ASSOCIATED REPORTERS OF NEVADA
2300 West Sahara Avenue, Suite 770
Las Vegas, Nevada 89102 (702)382-8778

DANIEL ESPENSCHIED

1 A. It's the last page where they show a photo of
2 the Strip during the 4th of July, Boom Town they're
3 calling it. "On these days Vegas becomes a burst of
4 color and light."

5 Q. Thank you. The next exhibit I want to go to
6 is What's On magazine. We've marked that as 19. Can
7 you tell us what that is?

8 A. It's another magazine concerning Las Vegas
9 and it's distributed throughout the casinos and hotels.
10 This one is What's On The Summer Magazine, it's the
11 July 2005 edition. It's a monthly magazine. Now,
12 actually I take that back. This is the one that it's
13 mailed to all the locals. I received this in the mail.

14 Q. And then if you'll turn to page 14 in that.

15 A. It's an article by Heather Turk called "Vegas
16 Faces" and it goes through some of the social events
17 with picturing locals.

18 Q. And then if you'll look at page 63, the next
19 page really, the bottom right hand.

20 A. It's an ad for one of the local FM stations,
21 105.7, the Oasis, smooth jazz for Las Vegas. It says
22 it is now playing all over Vegas, dot, dot, dot.

23 Q. If you'll turn to the next page which is sort
24 of a yellow color with a brown stripe down the
25 left-hand side.

DANIEL ESPENSCHIED

1 A. This is our hundredth anniversary this year
2 and this is an article concerning that hundred years in
3 Vegas, "The Legacy of Justice."

4 Q. And finally the last page of that exhibit.

5 A. It's a horoscope called "Vegas Scopes by
6 Vegas astrologer, numerologist and psychic Lona
7 Holland."

8 MS. ROESCH: And then I guess this is going
9 to be Exhibit -- we have premarked. We sent to you,
10 Terry, these are all the cards. They're all on one
11 page. Do you have that?

12 MR. LINN: We got about seven, single sheet
13 with photocopy of about seven looks like cards on them.

14 MS. ROESCH: Right. These are all the
15 canceled cards and I'm going to --

16 MR. LINN: Is it one exhibit?

17 MS. ROESCH: No, they're the actual cards.

18 MR. LINN: Okay.

19 MS. ROESCH: I think when he reads this off
20 you'll follow pretty easily.

21 BY MS. ROESCH:

22 Q. Here is Exhibit 20. Can you identify that
23 for us?

24 A. It's our custom B brand with MGM Mirage --
25 MGM Grand logo.

DANIEL ESPENSCHIED

1 MR. LINN: Give me one second. That is just
2 one card is Exhibit 20?

3 MS. ROESCH: It's the deck.

4 MR. LINN: You mean it's a deck of those
5 cards that say MGM Grand on it?

6 THE WITNESS: Yes, it's a complete deck.
7 It's a canceled deck and it has a seal on it that says
8 "MGM Grand, these cards were used in actual play in the
9 casino Las Vegas."

10 MR. LINN: Got it.

11 THE WITNESS: Exhibit No. 20.

12 BY MS. ROESCH:

13 Q. Okay, now Exhibit 21 can you identify that?

14 A. Number 21 is our deck of B brand use in the
15 Bellagio canceled and it also has a seal on it saying
16 these decks of cards actual play fabulous casino.

17 Q. Let's go to 22 then.

18 A. Exhibit 22 is our deck of B brand with Mirage
19 custom logo. It's a used deck. Twenty-three is our
20 Suncoast logo B brand card used deck with certain seal
21 on it, the seal saying that it was actual play in the
22 casino. Twenty-four is our deck of B brand with the
23 Mandalay Resort and Casino logo.

24 MR. LINN: Hold on one minute. I'm trying to
25 figure it out.

DANIEL ESPENSCHIED

1 MS. ROESCH: I'm sorry? We didn't hear you.

2 MR. LINN: I'm sorry, I'm trying to figure
3 out which one that is. You said Mandalay Bay?

4 THE WITNESS: That might be the one that it
5 was just pictured with Bee.

6 MR. LINN: Bee playing cards, club special?

7 MS. ROESCH: Right.

8 THE WITNESS: That's it.

9 MR. LINN: What was that number?
10 Twenty-four?

11 THE WITNESS: Twenty-four.

12 MS. ROESCH: Right.

13 MR. LINN: It's Mandalay Bay?

14 MS. ROESCH: Yes.

15 MR. LINN: Thank you.

16 THE WITNESS: Twenty-five is the deck of New
17 York New York B brand with the custom logo used deck
18 and the last one, 26, is our Excalibur. This is our
19 Aristocrat brand and it's their Excalibur logo
20 hotel/casino Las Vegas, the used deck.

21 BY MS. ROESCH:

22 Q. Now, where did these cards come from,
23 Exhibits 20 through 26?

24 A. I purchased all these at the Gamblers General
25 Store in Las Vegas.

DANIEL ESPENSCHIED

1 Q. What is the Gamblers General Store?

2 A. It's a retail outlet that sells used playing
3 cards amongst many things, books, et cetera.

4 Q. Now, would that be -- that's separate and
5 apart from a casino gift shop?

6 A. Yes.

7 Q. And besides -- what did you call it, the
8 Gamblers --

9 A. Gamblers General Store.

10 Q. Are there any other outlets like that?

11 A. You can buy these in -- there is several gift
12 shops around town. Also, each casino has their own
13 retail or gift shop outlets. Of course they only
14 specialize in their particular logo. You can also buy
15 these in -- I've seen them in Walgreen stores in town
16 and also at the airport, the airport gift shops.

17 Q. Is it important to a consumer to buy a deck
18 like we are talking about here, Exhibits 20 through 26?

19 MR. LINN: Objection. Leading.

20 BY MS. ROESCH:

21 Q. Go ahead and answer.

22 A. It's a good souvenir, especially for
23 out-of-town tourist which the bulk of the people are.

24 Q. Why would a consumer buy a deck like this as
25 opposed to buying the cards that they can buy at

DANIEL ESPENSCHIED

1 Walgreens for a dollar or less?

2 A. Because those decks wouldn't be the casino
3 logo. These are the customized decks that were
4 actually in play on the tables.

5 Q. And do the sales of these cards compete with
6 other brands from US Playing Card?

7 A. The B brand does. We have a domestic B brand
8 that's sold throughout our wholesale distribution
9 domestically through convenience stores, et cetera.
10 These compete somewhat with those.

11 Q. So now I'm going to mark as Exhibit 27
12 another -- it's the magazine that says Today on it,
13 Today in Las Vegas.

14 MR. LINN: Got it.

15 *(Exhibit 27 was marked for*
16 *identification.)*

17 BY MS. ROESCH:

18 Q. I'll ask you to take a look at that and tell
19 me what this is.

20 A. This is a weekly magazine that's published in
21 Vegas. This one covers July 14th through the 20th,
22 2005, and this again is available in the casinos,
23 hotels, throughout the city. It's Today in Las Vegas
24 is the title.

25 Q. Can you look at the second page of this

DANIEL ESPENSCHIED

1 exhibit and tell me what that is?

2 A. This shows a full page ad of Penn and Teller
3 which is one of the entertainment venues here in town.
4 They're at the Rio. It says, "The feel-good show of
5 the year," pictures both Penn and Teller. It says
6 "Penn and Teller living in Vegas, live at the Rio."

7 Q. And the next page?

8 A. Another ad for an entertainment show. This
9 is a magician, "Magic of Rick Thomas, best magician in
10 Vegas period," quotes Millionaire Magazine.

11 Q. At the bottom of that ad?

12 A. At the bottom is the logo for the Internet
13 site Vegas.com.

14 Q. Finally -- and the next page then?

15 A. This is another ad. It's another magician or
16 hypnotist, "Terry Stokes presents Hypnolarious," and
17 it's quoted by the Insider Viewpoint "The funniest show
18 in Vegas."

19 Q. And then the next page, looks like that might
20 be page 28.

21 A. This would be another ad. This is the
22 tribute to Frank, Sammy, Joey and Dean, the old Rat
23 Pack. Says, "For those who never saw the Rat Pack
24 live, the tribute to Frank, Sammy, Joey and Dean is the
25 next best thing." This was quoted from E-Vegas.

DANIEL ESPENSCHIED

1 Q. Finally the last page of this exhibit.

2 A. Is another ad. This is the Haunted Vegas
3 Tour.

4 Q. What is that?

5 A. It's a tour that you can contract where they
6 take you around. You see haunted casinos, motels where
7 celebrities have died, et cetera, Bugsy Seigel's ghost,
8 et cetera.

9 Q. And that's in --

10 A. In Las Vegas. Basically connected with
11 celebrity deaths, Elvis hauntings, et cetera.

12 Q. Are you familiar with Las Vegas in any
13 movies?

14 A. Yes. There has been several. I can't recall
15 the names but there's been several movies and
16 television shows.

17 Q. Can you think of any of the names?

18 A. I can't recall it.

19 Q. What about --

20 A. Leaving Vegas, that was one.

21 Q. All right.

22 A. That was one.

23 MS. ROESCH: Terry, give me a second. I'm
24 just reviewing my notes here. I'm going to wrap this
25 up.

DANIEL ESPENSCHIED

1 MR. LINN: Take your time.

2 BY MS. ROESCH:

3 Q. Before I do that, though, are you familiar
4 with Pyzanno Gaming?

5 A. Yes.

6 Q. What is that?

7 A. That's another competitor. They are a
8 distributor. They are located in Las Vegas and they
9 were representing Acarda Munde playing card which is
10 actually the fourth competitor but I do not believe
11 they represent them anymore but they distribute a line
12 of gaming chips and table layouts, anything connected
13 with the casino, table games department.

14 Q. I'm not sure if I asked this previously.
15 Never mind. I did. Going back to Exhibit 7 and 8 --

16 MR. LINN: Hold on one minute, please.

17 MS. ROESCH: Those are the Vegas cards.

18 MR. LINN: Let me just get to them. Okay.
19 Got it.

20 BY MS. ROESCH:

21 Q. Okay. Are you familiar with any other -- are
22 you familiar with any card using Vegas as their brand
23 name?

24 A. No. This is the first I've seen.

25 Q. That's in connection with anything you've

DANIEL ESPENSCHIED

1 seen in Las Vegas?

2 A. Yes.

3 Q. Have you ever seen these cards for sale in
4 Las Vegas?

5 A. I haven't personally but I've been told they
6 are in the discount stores.

7 Q. Do you know how much they sell for?

8 A. No.

9 Q. Just want to make sure I understand, are they
10 actually used in casinos in your observation?

11 A. No. They're strictly retail.

12 MS. ROESCH: That's all I have at this time.
13 I can wait to move admission of exhibits or however you
14 want. I think you want to go ahead and do your cross
15 first.

16 MR. LINN: That would be good.

17 MS. ROESCH: Okay.

18 CROSS-EXAMINATION

19 BY MR. LINN:

20 Q. Mr. Espenscheid.

21 A. Yes.

22 Q. Can you tell me where US Playing Card Company
23 manufactures its cards?

24 A. Everything is manufactured in Cincinnati,
25 Ohio. Well, that's the main plant. We do have one

DANIEL ESPENSCHIED

1 plant in Spain, Fournier Company. They do manufacture
2 Spanish themed playing cards.

3 Q. It's accurate to say that US Playing Cards
4 Company does not manufacture any playing cards in Las
5 Vegas?

6 A. No.

7 Q. They don't -- US Playing Card Company doesn't
8 manufacture playing cards anywhere in Nevada?

9 A. No.

10 Q. Would it be accurate to say that there are no
11 playing card companies that manufacture playing cards
12 in Las Vegas?

13 MS. ROESCH: If you know.

14 THE WITNESS: That I know of, GPI, Paulson
15 did several years ago but now they've moved. As I
16 mentioned earlier they moved all their manufacturing
17 facilities to Mexico.

18 BY MR. LINN:

19 Q. So to your understanding all of the playing
20 cards that are used in Las Vegas are actually
21 manufactured from somewhere else and brought in to the
22 city?

23 A. That's correct.

24 Q. Are you familiar with a JJT Company?

25 A. No, no JJT.

DANIEL ESPENSCHIED

1 Q. Are you familiar with companies that
2 manufacture or have their cards printed in China?

3 MS. ROESCH: Any company?

4 MR. LINN: Any company for now.

5 THE WITNESS: Well, we do compete with our
6 Kem poker cards we compete with several Queen brand.
7 These are all made in Taiwan and then there is a Stud
8 King. These are all, as I said, poker cards that I'm
9 familiar with. I don't know exactly where they're
10 manufactured. They are made in China and Taiwan and
11 Japan.

12 BY MR. LINN:

13 Q. I want to go back to the different grades or
14 types of cards you make. Your first card that you
15 mentioned the brand is B?

16 A. B brand.

17 Q. Your B brand cards are sold all over the
18 United States, correct?

19 A. Yes, the B brand -- here of course we do the
20 customized logo but there is a domestic B brand that is
21 sold throughout the country, throughout the world.

22 Q. B brand cards that you manufacture, you sell
23 to casinos all over the country, correct?

24 A. Correct.

25 Q. In fact you sell them to Atlantic City

DANIEL ESPENSCHIED

1 casinos and other casinos that are not located in Las
2 Vegas?

3 A. That's correct.

4 Q. So the casino cards that US Playing Cards
5 makes with the exception of some private labels that
6 they do for a particular casino are basically
7 manufactured for anywhere in the country?

8 A. Yes.

9 MS. ROESCH: Objection. I think that's vague
10 and ambiguous. Go ahead and answer.

11 THE WITNESS: Well, anywhere in the country
12 that has a casino.

13 BY MR. LINN:

14 Q. Now, you also mentioned Aristocrat. Are
15 those Aristocrat cards that are made by US Playing Card
16 also sold throughout the country?

17 A. Only with casino. Aristocrat is strictly a
18 casino brand. There is no domestic Aristocrat brand.

19 Q. The Aristocrat cards that US Playing Cards
20 make are sold to casinos say in Atlantic City and other
21 cities throughout the United States, correct?

22 A. Correct.

23 Q. So the cards that are made by US Playing Card
24 under the Aristocrat brand and are sold to some casinos
25 in Las Vegas are the same cards that are sold to

DANIEL ESPENSCHIED

1 Atlantic City casinos?

2 A. Correct.

3 Q. These Kem plastic poker cards referred to --

4 A. Yes.

5 Q. Are those also sold to locations throughout
6 the United States?

7 A. Yes, in connection with poker rooms.

8 Q. And those Kem plastic poker cards are the
9 same when they're sold to a poker room in Atlantic City
10 or Detroit as those that are sold to locations in Las
11 Vegas; is that correct?

12 A. That's correct.

13 Q. You said that in your answer that you were
14 aware that Harbro's Vegas brand cards were sold in some
15 discount stores; is that correct?

16 A. Yes.

17 Q. In your answer were you saying that it's your
18 understanding that Harbro's Vegas brand playing cards
19 are sold in Las Vegas in discount stores?

20 MS. ROESCH: If you know.

21 THE WITNESS: I believe it's the Costco
22 store.

23 BY MR. LINN:

24 Q. But it's your understanding that the Las
25 Vegas -- I'm sorry. I'll withdraw that.

DANIEL ESPENSCHIED

1 It's your understanding that the Harbro
2 playing card with the Vegas brand are sold in Las
3 Vegas?

4 A. Correct.

5 Q. Does Reno have casinos?

6 A. Yes.

7 Q. And does Tahoe have casinos?

8 A. Yes.

9 Q. Reno is located in Nevada, correct?

10 A. Correct.

11 Q. Which state is Tahoe in?

12 A. Nevada. It's on the line of Nevada,
13 California, but the casinos are all in the Nevada side.

14 Q. US Playing Cards does not sell Nevada brand
15 playing cards, does it?

16 A. No.

17 Q. And US Playing Cards does not -- well, I'll
18 withdraw that.

19 US Playing Cards has not sold Nevada brand
20 playing cards for at least say five years?

21 A. I've been with the company 35 years and I've
22 never heard of that brand.

23 Q. US Playing Cards, your company does not sell
24 Tahoe brand cards; is that correct?

25 A. No.

DANIEL ESPENSCHIED

1 Q. And US Playing Card Company has not sold
2 Tahoe brand cards for over 20 years?

3 MS. ROESCH: Objection because that assumes
4 that they ever sold it and he just told you they don't
5 sell it.

6 BY MR. LINN:

7 Q. Okay. Is it your understanding that US
8 Playing Card Company, your company, has never sold
9 Tahoe brand card?

10 A. To my understanding, yes.

11 Q. Is it your understanding that United States
12 Playing Card Company has never sold Broadway brand
13 playing cards?

14 A. Broadway, I cannot honestly answer that. I
15 don't know.

16 Q. Don't know one way or another?

17 A. I don't know that one, one way or the other.

18 Q. Has United States Playing Card Company ever
19 sold Club Reno brand cards?

20 A. That I don't know myself one way or the
21 other.

22 Q. Is it your understanding that they have
23 not -- that US Playing Card Company has not sold Club
24 Reno cards for at least the last 20 years?

25 A. To my knowledge.

DANIEL ESPENSCHIED

1 MS. ROESCH: He just told you he doesn't have
2 any knowledge of it.

3 MR. LINN: Counsel, this is not your
4 deposition.

5 MS. ROESCH: I understand but, I mean, I
6 think the question --

7 MR. LINN: I think if you're going to testify
8 we'll do it later. If you've got an objection, make
9 it. Don't start telling the witness what to do.

10 BY MR. LINN:

11 Q. Mr. Espenscheid, was the Arco Playing Card
12 Company, Inc., part of or somehow became associated
13 with United States Playing Card Company?

14 A. Yes, they were located in Chicago. We bought
15 them I'm guessing it's been over 20 years.

16 Q. So for let's say the last 20 years the Arco
17 Playing Card Company has been the United States Playing
18 Card Company?

19 A. One in the same, yes.

20 Q. I'm sorry, can I have your answer?

21 A. One in the same, yes.

22 Q. How many employees do you supervise?

23 A. One, myself.

24 Q. You basically work out of your home?

25 A. Yes.

DANIEL ESPENSCHIED

1 Q. Does the US Playing Card Company own any
2 facilities in Las Vegas?

3 A. No.

4 Q. All right. Can you go to the stack of
5 exhibits, may as well put them in order. We'll just
6 walk through them.

7 MS. ROESCH: They're in order.

8 BY MR. LINN:

9 Q. Okay, good. Let's turn to Exhibit No. 2,
10 please. Mr. Espenscheid, were you responsible for
11 printing out or otherwise obtaining this particular
12 exhibit?

13 A. No.

14 Q. Looking at the second page of Exhibit 2 do
15 you know who any of those people referenced are?

16 A. No.

17 Q. Do you have any idea as to what time period
18 that this website page existed?

19 A. Well, outside of the printout it has a date
20 of 7/19/05 but I think that's the time it was printed
21 out.

22 Q. Other than the print date July 19th, 2005,
23 you don't know when this website information was put on
24 the Internet?

25 A. This photograph has a date of December 1st,

DANIEL ESPENSCHIED

1 2001.

2 Q. Okay. Could you answer my question?

3 MS. ROESCH: Can you repeat it?

4 MR. LINN: Could you have the reporter read
5 it back?

6 *(The record was read back by the court*
7 *reporter.)*

8 THE WITNESS: No.

9 BY MR. LINN:

10 Q. The answer is no, you do not know? Just want
11 to make sure.

12 A. Right. I do not.

13 Q. Turning to Exhibit 3, were you responsible
14 for printing out or otherwise obtaining the document
15 that makes up Exhibit 3?

16 A. No.

17 Q. Do you know what date the information that's
18 placed -- contained in Exhibit 3 was placed on the
19 Internet?

20 A. Well, there is a copyright 2004.

21 Q. Does that tell you that the information was
22 actually placed on the --

23 A. No, I have no idea.

24 Q. -- Internet as of 2004?

25 A. I have no idea.

DANIEL ESPENSCHIED

1 Q. Other than the print date of July 19, 2005,
2 do you see that?

3 A. Yes.

4 Q. Other than that, do you have any date that
5 you can say that this information appeared on this
6 Internet website?

7 A. No.

8 Q. Go to Exhibit No. 4. Were you responsible
9 for obtaining the document or materials that make up
10 Exhibit 4?

11 A. No.

12 Q. Do you know when the information that's
13 included in Exhibit 4 was placed on the Internet?

14 A. No.

15 Q. Other than what appears to be a print date of
16 July 20, 2005, do you know when this information was
17 placed on or appeared on the Internet?

18 A. No.

19 Q. Now, to your knowledge this GPI company or
20 Gaming Partners International, am I correct that you
21 said that all their manufacturing of playing cards
22 takes place in Mexico?

23 A. Correct.

24 Q. That would include cards that are used in
25 casinos throughout the United States; is that correct?

DANIEL ESPENSCHIED

1 A. That's correct.

2 Q. That includes cards that are used and played
3 with in Atlantic City and other casinos in the US?

4 A. Correct.

5 Q. Could you repeat the name of that company
6 that I think you said was Gemaco?

7 A. Gemaco Playing Card Company. They're located
8 in Missouri.

9 Q. That is the second largest -- I'm sorry.
10 I'll say that again. Gemaco Playing Card Company is
11 your company's largest competitor; is that correct?

12 MS. ROESCH: Objection. That's not what the
13 testimony was.

14 THE WITNESS: Yes.

15 BY MR. LINN:

16 Q. Just so I'm clear, Gemaco Company is US
17 Playing Card Company's largest competitor?

18 A. Yes.

19 MS. ROESCH: Once again I still have a
20 continuing objection.

21 BY MR. LINN:

22 Q. All of the playing cards sold by Gemaco
23 Playing Card Company are manufactured outside of Las
24 Vegas, correct?

25 A. Yes.

DANIEL ESPENSCHIED

1 Q. And Gemaco Company -- I'm sorry, I'll take
2 that back. What's the name of the company, Gemaco
3 Playing Card Company?

4 A. Gemaco Playing Card Company.

5 Q. Gemaco Playing Card Company does not maintain
6 a warehouse in Las Vegas?

7 A. No, to my knowledge.

8 Q. Okay. Just so I understand, am I correct
9 that Gemaco Playing Card Company, to your knowledge,
10 does not maintain a warehouse in Las Vegas?

11 A. Correct.

12 Q. Do you know where Gemaco Playing Card Company
13 manufactures this playing card?

14 A. In Missouri. It's near Kansas City.

15 Q. So all of the playing cards sold by Gemaco
16 Playing Card Company to casinos are shipped in from
17 Missouri; is that correct?

18 A. That's correct.

19 Q. Turn to Exhibit 5, please. Were you
20 responsible for printing out or otherwise obtaining the
21 materials that make up Exhibit 5?

22 A. No.

23 Q. Do you know when the information that's
24 included in Exhibit 5 were placed on the Internet?

25 A. No, outside of the trademark 2005 that's a

DANIEL ESPENSCHIED

1 trademark, copyright, so that doesn't have anything to
2 do with that date.

3 Q. That copyright of 2005 indicate to you that
4 this information was not available on the Internet
5 prior to 2005?

6 A. That's what I would understand that to be.

7 Q. The date that's in the bottom right corner
8 July 19, 2005, do you see that?

9 A. Yes.

10 Q. Other than that print date do you know when
11 this information was placed on the website prior to
12 July 19, 2005?

13 A. No, I do not.

14 Q. Go to Exhibit 6. Are you responsible for or
15 otherwise involved in printing out or otherwise
16 obtaining materials of Exhibit 6?

17 A. No.

18 Q. Do you know when the information that's
19 included in Exhibit 6 was placed on the Internet?

20 A. No.

21 Q. Other than the print date of July 19, 2005,
22 do you know whether the information included on
23 Exhibit 6, when it was available on the Internet?

24 A. Well, they have a copyright on this one
25 saying all contents from 1998 through 2005, be any time

DANIEL ESPENSCHIED

1 in that time period.

2 Q. That reference to copyright 1998-2005, does
3 that notice indicate to you that the notice was
4 generated in 2005?

5 A. No. Could be any time in that time period.

6 Q. So do you think a company might use a
7 copyright notice that says a year in advance of today,
8 for instance?

9 MS. ROESCH: Objection. I don't understand
10 the question. If he does he can answer.

11 BY MR. LINN:

12 Q. In other words, this 1998-2005 notice, do you
13 think they used the notice 1998-2005 prior to 2005?

14 A. No.

15 Q. So that notice says that it was generated,
16 this material was generated as, at least as of 2005?

17 A. Correct.

18 Q. I'm getting more confusing than its worth.
19 Go to Exhibit 9. Do you have it?

20 A. Yes.

21 Q. You talked about that as showing a card that
22 is a double end card?

23 A. That's what they call the two logos, it's a
24 double ended effect. It's on -- you can turn it each
25 way and it would appear.

DANIEL ESPENSCHIED

1 Q. To your knowledge is there any rule or law
2 that says that a double end card cannot be used for
3 retail sale?

4 A. No, there isn't any.

5 Q. Just want to make sure, are you contending
6 that Harbro's use of a double end card in Exhibit 9
7 is -- well, I'll withdraw that.

8 Let's go to Exhibit 10. Do you have that?

9 A. Yes.

10 Q. Are you responsible for printing out or
11 otherwise involved in obtaining the materials that make
12 up Exhibit 10?

13 A. No.

14 Q. Have you ever been to the Gameland Sports
15 website?

16 A. No.

17 Q. Do you know when the information contained in
18 Exhibit 10 was placed on the Internet?

19 A. No. Here again it's got a copyright of 2005.

20 Q. The information included in the front page of
21 Exhibit 10 that shows the playing card that's got a
22 "Welcome to fabulous Las Vegas" logo on it, do you see
23 that?

24 A. Yes.

25 Q. Is that a double end card?

DANIEL ESPENSCHIED

1 A. Yes, that's another double ended, what they
2 call a double ended effect.

3 Q. Hold on one second. It's your understanding
4 this card is not used in casinos?

5 A. No.

6 Q. I'm sorry, say again.

7 A. No. It's strictly souvenir, souvenir card.

8 Q. Are you aware that Gameland Sports is
9 actually located in Clinton township just outside of
10 Detroit, Michigan?

11 A. No, I have no knowledge of that.

12 Q. Do you know where Gameland Sports ships its
13 cards from?

14 A. No knowledge, no.

15 Q. Are you aware that these cards that are shown
16 here are actually manufactured overseas?

17 A. No.

18 Q. Do you know whether or not the cards that are
19 shown in Exhibit 10 are actually made by JJT Company?

20 A. No.

21 Q. Do you know whether the Gameland Sports
22 website elsewhere in its website identifies the
23 company, its location and has a map that shows it to be
24 located outside of Detroit, Michigan?

25 A. Not on the two pages.

DANIEL ESPENSCHIED

1 Q. Do you know if elsewhere in the Gameland
2 Sports website they include that information for people
3 that want to know where they are located?

4 A. They do have a section at the top with "Home"
5 and they have a "Contact" section.

6 Q. You have not looked at that and figured out
7 where Gameland Sports is located?

8 A. No, no, I have not.

9 Q. Do you know when these particular cards shown
10 in Exhibit 10 were introduced, first started to be
11 sold?

12 A. No.

13 Q. Was it just recent?

14 A. I have no knowledge.

15 MR. LINN: Counsel, you skipped over
16 Exhibit 11.

17 MS. ROESCH: I didn't use it.

18 MR. LINN: And you didn't use it. You don't
19 intend to introduce it or otherwise offer it?

20 MS. ROESCH: Nope, I don't.

21 BY MR. LINN:

22 Q. Mr. Espenscheid, are you aware that cards by
23 US Playing Card Company are sold overseas?

24 A. Yes, we have an international division.

25 Q. Are you aware of those cards being sold in

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1 association with a company referred to as Viva Vegas
2 Entertainment?

3 A. I'm not familiar with that, no.

4 Q. Let's go to Exhibit 12. Were you responsible
5 for printing off or otherwise involved in the obtaining
6 of the information shown in Exhibit 12?

7 A. No.

8 Q. Do you know when the information included in
9 Exhibit 12 was placed on the Internet?

10 A. No, no idea.

11 Q. Other than the print date which appears to be
12 July 11, 2005, do you know whether the information
13 included in Exhibit 12 appeared on the Internet?

14 A. No, outside they do have a copyright date
15 again 2005. That's the only date.

16 Q. Have you ever been to The Game Saloon
17 website?

18 A. No.

19 Q. Are you aware that The Game Saloon is
20 actually located in Northridge, California?

21 A. No.

22 Q. Are you aware that The Game Saloon website
23 has information elsewhere on its website not included
24 in Exhibit 12 that identifies it as being located in
25 Northridge, California?

DANIEL ESPENSCHIED

1 A. No.

2 Q. Is it your understanding that there are
3 Internet websites out there that would sell playing
4 cards claiming them to have been coming from Vegas when
5 they're actually located in states other than Nevada?

6 A. Yes.

7 MS. ROESCH: Okay. Could you just read the
8 question back because I don't know if I understood it.

9 *(The record was read back by the court*
10 *reporter.)*

11 THE WITNESS: Yes.

12 BY MR. LINN:

13 Q. Could you turn to Exhibit 13. Do you have
14 it?

15 A. Yes.

16 Q. Were you involved in the printing out or
17 otherwise obtaining the materials that make up
18 Exhibit 13?

19 A. No.

20 Q. Do you know when the information included in
21 Exhibit 13 was placed on the Internet?

22 A. No.

23 Q. Have you ever been to Old Vegas Chips
24 website?

25 A. No.

DANIEL ESPENSCHIED

1 Q. Do you know what the reference at page two is
2 to "Our World Famous Las Vegas Casino Chip Museum"?

3 A. No.

4 Q. Do you believe there is a physical location
5 that's a Las Vegas casino chips museum this refers to?

6 A. I would believe that was reference to their
7 Internet site.

8 Q. Do you know who Pete and Chantal Rizzo are?

9 A. No.

10 Q. Do you know whether or not they are a husband
11 and wife team that are running a business out of a P.O.
12 box, drop box?

13 A. No.

14 Q. Ever seen a picture of Pete and Chantal
15 Rizzo?

16 A. No.

17 Q. Have any idea where Pete and Chantal Rizzo
18 are located?

19 A. No idea.

20 Q. Could you turn to Exhibit 14. Do you have
21 it?

22 A. Yes.

23 Q. Are you responsible or otherwise involved in
24 obtaining the materials that make up Exhibit 14?

25 A. No.

DANIEL ESPENSCHIED

1 Q. Do you know when the information that's
2 included in Exhibit 14 was placed on the Internet?

3 A. No.

4 Q. Other than the print date of July 20, 2005,
5 do you have any knowledge as to whether this
6 information appeared on the web, Internet, prior to
7 July 20, 2005?

8 A. Here again it has copyright 1995 through 2005
9 so it could be any time in that period I would think.

10 Q. From your knowledge of eBay is it possible
11 for someone to place anything they want for sale and
12 call it anything they want?

13 A. To my knowledge it's very limited concerning
14 eBay.

15 Q. The answer to that is yes?

16 A. Yes.

17 Q. Turning to Exhibit 15, were you involved in
18 obtaining, printing out or otherwise putting together
19 the materials that make up Exhibit 15?

20 A. No.

21 Q. Do you know when the information included in
22 Exhibit 15 was placed on the Internet?

23 A. No.

24 Q. Other than the date of July 19, 2005, it
25 appears to be a print date.

DANIEL ESPENSCHIED

1 A. Yes.

2 Q. Do you have any information that this
3 appeared on the Internet prior to 2005 -- July 19,
4 2005?

5 A. There is a copyright date of 2004.

6 Q. Is it your understanding that copyright date
7 2004 means the information was actually placed on the
8 Internet in 2004?

9 A. No.

10 Q. This pokerchipwholesale.com, have you ever
11 been to that website?

12 A. No.

13 Q. Do you know whether Poker Chip Wholesale is
14 actually located in Santa Ana, California?

15 A. No.

16 Q. Looking at the front page of Exhibit 15 there
17 is some photographs or pictures, let's say, of a B
18 brand playing card?

19 A. Yes.

20 Q. And that's a brand of cards that your company
21 sells?

22 A. Yes, correct.

23 Q. Are all cards that are part of this used
24 casino card market, are they marked in a fashion to
25 indicate that they are used cards?

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1 A. Yes, the decks themselves, the corners are
2 cut, either the corners are cut or they're drilled and
3 then the tuck box has that seal as pictured there.

4 Then they --

5 Q. Are brand new decks that don't have this seal
6 and cutting, are they sold by the casinos as having
7 been used in the casino?

8 A. No.

9 Q. When someone buys or is interested in buying
10 a used set of cards that have actually been used in a
11 casino, they need to look for this little seal that
12 designates it as having been used in a casino; is that
13 correct?

14 A. Yes.

15 Q. And if the person is buying a brand new
16 unopened deck, they know that it was not used in a
17 casino?

18 A. Yes, correct.

19 MS. ROESCH: Objection. Lack of foundation,
20 knowledge.

21 BY MR. LINN:

22 Q. You believe that that practice of using a
23 seal and identifier clearly labeling it as having been
24 used is used by or employed by all of the casinos?

25 A. Yes, that we deal with.

DANIEL ESPENSCHIED

1 Q. If a consumer wants to buy a deck of cards
2 that has actually been used in a casino, they have to
3 look for one of these decks that have the special
4 little label on it and marking that says that it's been
5 used; is that correct?

6 A. Yes.

7 Q. Turn to Exhibit 16. Are you responsible for
8 or involved in the obtaining of the materials that make
9 up Exhibit 16?

10 A. No.

11 Q. Do you know when the information in
12 Exhibit 16 was placed on the Internet?

13 A. No.

14 Q. Ever been to the National Geographic website?

15 A. Yes. It's been several years though.

16 Q. What did you look at when you were there?

17 A. I can't even -- it's been several years. I
18 can't recall.

19 Q. Would it be safe to say you did not look at
20 the information that's included in Exhibit 16?

21 A. Yes.

22 Q. Do you know what the name of this alleged
23 award handed out by National Geographic was?

24 A. No.

25 Q. Do you know what that award supposedly

DANIEL ESPENSCHIED

1 signified?

2 A. I'm not sure if it's much, as much as an
3 award, it's just a listing by the magazine as far as it
4 was a part -- Las Vegas was listed as part of the top
5 50 places, must see places.

6 Q. Other than what you're reading on the front
7 page of Exhibit 16 do you know anything about this
8 award?

9 A. No.

10 Q. Would you turn to Exhibit 17. Were you
11 responsible for or otherwise involved in the obtaining
12 of the materials that make up Exhibit 17?

13 A. No.

14 Q. Do you know when the information included in
15 Exhibit 17 were placed on the Internet?

16 A. No.

17 Q. Do you know whether the materials included in
18 Exhibit 17 were available on the Internet prior to what
19 appears to be the print date of July 21, 2005?

20 A. No, here again they do have a copyright 2005.

21 Q. Ever been to the discovery -- I'm sorry, the
22 travel.discovery.com website?

23 A. No.

24 Q. Turn to Exhibit 18. Have it?

25 A. Yes.

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1 Q. Is your company involved in any way with this
2 magazine?

3 A. No.

4 Q. Could you turn to Exhibit 19. Have it?

5 A. Yes.

6 Q. Do you have Exhibit 19?

7 A. Yes.

8 MS. ROESCH: He has them all in order so it's
9 not a problem.

10 MR. LINN: I just always want to check and
11 make sure he's got the exhibit in front of him.

12 MS. ROESCH: I think he is saying yes but
13 you're not hearing him.

14 MR. LINN: Sorry.

15 BY MR. LINN:

16 Q. Is your company involved in this magazine,
17 Exhibit 19?

18 A. No.

19 Q. Go to Exhibit 20. May as well go to the
20 cards.

21 MS. ROESCH: Okay. We got them.

22 BY MR. LINN:

23 Q. Exhibit 20, does that exhibit bear the label
24 or identifier that says that this was a used card or
25 deck of cards?

DANIEL ESPENSCHIED

1 A. Yes.

2 Q. Look at Exhibit 21, 22, 23, 24, 25, and 26
3 and tell us whether all of those decks include this
4 special band or tape that identifies the cards as
5 having been used in a casino.

6 A. Yes, they all do.

7 Q. Look at Exhibit 24. Do you see that?

8 A. Yes.

9 Q. Are those cards sold to any other casinos
10 other than Mandalay Bay?

11 A. No. Competitive casinos don't sell other
12 casinos' cards but it would be sold in the retail,
13 outside the casino.

14 Q. Say that again.

15 A. They would be sold in other retail shops
16 outside the casino.

17 Q. Would they be sold in Atlantic City?

18 A. They could be. I'm not familiar with that.
19 The distributor that handles those sells throughout the
20 country.

21 MR. LINN: I'm just consulting my notes here.

22 MS. ROESCH: While you do that could I run to
23 the bathroom?

24 MR. LINN: Yes, I'll wait until you come
25 back.

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(A brief recess was taken.)

1
2 BY MR. LINN:

3 Q. Mr. Espenscheid, are you familiar with any of
4 the principals or officers of Harbro?

5 A. I knew -- because I worked with the company
6 for so long, I didn't work with Mark Hardwell but I was
7 in and out of the office when he was there, when he was
8 employed by US Playing Card Company.

9 Q. Would it be fair to say the United States
10 Playing Card Company hates Harbro Company?

11 MS. ROESCH: Objection.

12 BY MR. LINN:

13 Q. You can answer.

14 A. No.

15 Q. Is it fair to say that United States Playing
16 Card Company is trying to keep Harbro Company from
17 doing what United States Playing Card Company has done
18 on a number of occasions in the past?

19 MS. ROESCH: Objection.

20 BY MR. LINN:

21 Q. Namely registering a name when there are no
22 cards made in that location?

23 A. I can't honestly answer that because I'm not
24 in the loop on the management of the company.

25 MR. LINN: No further questions.

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REDIRECT EXAMINATION1
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BY MS. ROESCH:

Q. I just have a few questions, Mr. Espenscheid.
If you'll go to Exhibit 6 which is the vegas.com site.

MR. LINN: Did you say 6?

MS. ROESCH: Yes, 6.

MR. LINN: Thank you.

BY MS. ROESCH:

Q. Have you ever visited that site?

A. Yes, I have visited that site.

Q. For what purpose?

A. Part of my job is we do a trade show out here
in September and I'm responsible for getting hotels and
that. That's one of the good sources for hotels and
shows to entertain the employees when they're here.

Q. Is Exhibit 6 consistent with what you have
seen on the vegas.com website?

A. Yes.

Q. When you have visited the website have you
seen the information that is on Exhibit 6?

A. Yes. Of course it updates. This one just
covers July and August and part of September.

Q. In terms of the used casino cards that we
marked Exhibits 20 through 26, have you observed these
cards being bought in casino shops? Did you want to

DANIEL ESPENSCHIED

1 object?

2 MR. LINN: I've got my continuing objection,
3 right?

4 MS. ROESCH: These are the cards that he
5 actually bought. Okay.

6 THE WITNESS: Yes.

7 BY MS. ROESCH:

8 Q. Have you observed people buying these cards?

9 A. Actually while I was buying, other people
10 were in the store buying that or similar decks.

11 Q. Do you have an observation as to what kind of
12 business these kind of cards, these used cards do in
13 casino shops?

14 A. It's quite profitable. As I mentioned
15 before, the casino pays average like a dollar a deck.
16 They'll turn around and resell them for 2.99.

17 Q. Do you know if they resell all of the cards
18 that they use?

19 A. No.

20 Q. How many -- what percentage, do you know?

21 A. Well, normally the company that does the
22 canceling and reconstituting of the decks, they'll give
23 50 percent back to the casino for their sales and then
24 they'll sell their other 50 percent across the country.

25 MS. ROESCH: I don't have anything else but I

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1 do want to move admission of the exhibits.

2 MR. LINN: I'm not done yet. I've got to
3 come back to those questions you asked.

4 MS. ROESCH: All right. That's fine.

5 **RECROSS-EXAMINATION**

6 BY MR. LINN:

7 Q. Mr. Espenscheid, Exhibit 6 --

8 MS. ROESCH: He's got it.

9 THE WITNESS: Vegas.com, yes.

10 BY MR. LINN:

11 Q. Let's go through this. I am intrigued by
12 your comment that the information included in Exhibit 6
13 you've seen it on there, on the website previously.
14 That picture of a hot tub where it says "Dive into
15 Vegas" --

16 A. Yes.

17 Q. Did you see that on the website prior to
18 seeing Exhibit 6?

19 A. Not that particular picture.

20 Q. Okay. Tell me exactly what specific items in
21 Exhibit 6 you know for certain you saw on the website
22 prior to seeing Exhibit 6.

23 A. They're not specific. It's just the idea of
24 the listing of the hotel specials, events, et cetera,
25 because they update them on a monthly basis.

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1 Q. You can't tell me any one specific thing you
2 know you've seen on Exhibit 6?

3 A. Outside of the logo which is vegas.com.

4 Q. All right. Let's turn to Exhibits 20 through
5 26.

6 MS. ROESCH: He's got them.

7 BY MR. LINN:

8 Q. Got those?

9 A. Yes.

10 Q. You didn't buy those cards in a casino, did
11 you?

12 A. These I purchased at Gamblers General Store.

13 Q. Okay. Your testimony where you said when you
14 were buying these in the casino you saw other people
15 buying similar cards, that was not correct, is it?

16 A. No, no, not these particular decks.

17 Q. So your testimony that you just gave was just
18 wrong?

19 MS. ROESCH: Objection. You can answer.

20 THE WITNESS: Oh, no, these particular decks
21 I bought in Gamblers General Store

22 Q. What's your involvement in the purchase by
23 the wholesale company from the casino and then the sale
24 back to the casinos?

25 A. None. It's a totally different -- it's

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1 completely independent company.

2 Q. On what basis do you know the various
3 percentages of sales and activities undertaken by the
4 wholesaler?

5 A. By dealing, I have worked with TJ Wholesale
6 which is the basic company that does this. That's --
7 and also through the casinos. The casino managers tell
8 me, have told me that that's generally what they
9 received back from TJ Wholesales, 50 percent of what
10 they take they keep.

11 Q. Okay, tell me who told you that.

12 A. Casino managers, VP's of casino operations.

13 Q. I need names.

14 A. That I can't produce.

15 MR. LINN: No further questions.

16 MS. ROESCH: I don't have anything further.

17 At this point I move admission of all the exhibits that
18 we've used here today. I understand Mr. Linn is
19 objecting and has put his objections on the record.

20 MR. LINN: I maintain my objections based on
21 hearsay, foundation, and I'd also object on lack of
22 competence for this witness to testify about these
23 exhibits.

24 MS. ROESCH: All of them?

25 MR. LINN: Let's see. I'm just checking on

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1 this. I guess I would not make the lack of competence
2 and foundation objection but I would maintain the
3 hearsay on Exhibits 18 and 19.

4 MS. ROESCH: Okay. The witness is going to
5 reserve the right to read and sign.

6 MR. LINN: Okay.

7 MS. ROESCH: And the regular federal rules,
8 stipulations apply.

9 MR. LINN: Very good. We agree to that.

10 *(Thereupon, the deposition*
11 *concluded at 12:08 p.m.)*

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CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
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AN LISTING OF OUR MAIN BRAND
"B" SHOULD ACTUALLY BE LISTED
AS THE FULL NAME "BEE"

* * * * *

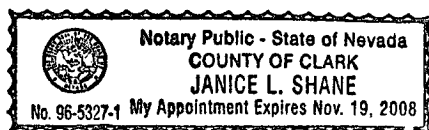
I, DANIEL ESPENSCHIED, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

DANIEL ESPENSCHIED, Deponent

[illegible]

Subscribed and sworn to before me this

23rd day of August, 2005.



Notary Public

ASSOCIATED REPORTERS OF NEVADA
2300 West Sahara Avenue, Suite 770
Las Vegas, Nevada 89102 (702)382-8778

DANIEL ESPENSCHIED

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
 COUNTY OF CLARK)

I, Stephanie D. Ruhland, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the deposition of DANIEL ESPENSCHIED, commencing on Friday, July 29, 2005, at 10:15 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said stenographic notes via computer-aided transcription into written form, and that the typewritten transcript is a complete, true and accurate transcription of my said stenographic notes. That review of the transcript was requested.

I further certify that I am not a relative, employee or independent contractor of counsel, of any of the parties, nor a relative, employee or independent contractor of the parties involved in said action, nor a person financially interested in the action, nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 16th day of August, 2005.



STEPHANIE D. RUHLAND, RMR, CCR NO. 238

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Daniel Espenscheid Volume 1 July 29, 2005

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